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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~519.~~ 234

SCHUYLER'S STEAM TOWBOAT LINE, CLAIMANT OF THE STEAMBOAT CONNECTICUT, HER ENGINE, &c., APPELLANT,

vs.

MADISON M. CALEB.

No. ~~520.~~ 235

MADISON M. CALEB, APPELLANT,

vs.

WILLIAM H. FOOTE AND SAMUEL SCHUYLER, CLAIMANTS OF THE STEAMBOAT S. A. STEVENS, HER ENGINE, &c.

No. ~~521.~~ 236

CHARLES WILSON AND ARTHUR WILSON, CLAIMANTS OF THE STEAMSHIP OTHELLO, HER ENGINES, &c., APPELLANTS,

vs.

MADISON M. CALEB.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 8, 1870.

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No. 519.

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vs.

MADISON M. CALEB.

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vs.

WILLIAM H. FOOTE AND SAMUEL SCHUYLER, CLAIMANTS OF THE STEAMBOAT S. A. STEVENS, HER ENGINE, &c.

No. 521.

CHARLES WILSON AND ARTHUR WILSON, CLAIMANTS OF THE STEAMSHIP OTHELLO, HER ENGINES, &c., APPELLANTS,

vs.

MADISON M. CALEB.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print
Libel	1	1
Answer of claimants of Othello	7	4
Stevens	12	6
Connecticut	22	11
M. B. Starbuck	31	16

EVIDENCE FOR LIBELLANTS.

	Original.	Print.
Deposition of John Hall	35	17
Geo. W. Roosevelt	47	24
Hammil Willse	55	29
James Nibbs	190	117

EVIDENCE FOR OTHELLO.

John Hall	39	19
Do.	45	24
G. W. Roosevelt	49	26
H. Willse	57	30
H. Temple	67	37
James Mills	174	108
James L. Rogers	182	112
Do.	188	116
James Nibbs	188	116
R. J. W. Bristow	192	118
William Brown	217	135
Charles Wright	223	139

EVIDENCE FOR CONNECTICUT AND STEVENS.

John Hall	43	22
G. W. Roosevelt	52	27
H. W. Temple	59	31
Daniel Brace	84	48
Sherman Frear	91	52
J. B. Fountain	107	63
Geo. M. Fournade	126	75
Fredk. Stebbins	142	86
John Temple	147	90
A. Geoghagan	149	92
Geo. Spoon	152	94
A. Bush	153	95
Thomas Murray	157	97
James Mills	178	110
James L Rogers	185	114
James Nibbs	189	117
R. J. W. Bristow	193	118
Jacob Brandon	204	126
William Brown	221	137
Thos. M. Lawlor	225	139
William H. Foote	227	141

EVIDENCE FOR STARBUCK.

Jacob Brandon	195	120
William Brown	216	134
Interlocutory decree	232	144
Commissioner's report	233	144
Final decree	234	145
Opinion of district court	237	146
Notice of appeal on part of Connecticut	239	147
Petition of appeal on part of Connecticut	240	147

	Original.	Print.
Bond on appeal on part of Connecticut	242	148
Notice of appeal on part of libellant	244	149
Petition of appeal on part of libellant	245	150
Bond on appeal on part of libellant	247	151
Notice of appeal on part of Othello	249	152
Petition of appeal on part of Othello	250	152
Bond on appeal on part of Othello	253	153
Minutes of circuit court	255	155

EVIDENCE TAKEN IN CIRCUIT COURT ON BEHALF OF STEAMSHIP OTHELLO.

John Maginn	257	155
John Henry Alice	265	159
Bernard Brady	265	160
Joseph Henderson	266	160
Opinion of circuit court	272	163
Finding of facts of circuit court	279	165
Interlocutory decree	287	167
Commissioner's report	292	168
Final decree	295	169
Bill of exceptions on part of Connecticut	303	171
Notice of appeal on part of Connecticut	342	184
Petition of appeal on part of Connecticut	345	185
Bond on appeal on part of Connecticut	354	187
Citation of appeal on part of Connecticut	357	188
Bill of exceptions on part of libellant	359	189
Notice of appeal on part of libellant	388	197
Petition of appeal on part of libellant	390	197
Bond on appeal on part of libellant	397	199
Citation on part of libellant	400	200
Bill of exceptions on part of Othello	403	200
Notice of appeal on part of Othello	422	207
Consent extending time to appeal, Othello	424	207
Petition of appeal on part of Othello	425	208
Bond on appeal on part of Othello	433	210
Citation on appeal on part of Othello	437	211
Clerk's certificate	439	211

1 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms in the city of Brooklyn, on the 30th day of September, 1875.

Present, Hon. Charles L. Benedict, district judge.

MADISON M. CALEB
against
THE STEAMBOATS CONNECTICUT, S. A. STEVENS, Othello, and N. B. Starbuck, their engines, &c.

The libellant in the above action appears and files his libel against the above-named steamboats, in the words and figures following, to wit:

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The libel and complaint of Madison M. Caleb, for himself and all others interested in the canal-boat Sam Morgan, her tackle, apparel, and furniture, and the cargo laden on board thereof, whereof, John Hall was lately master or captain, against the steam tow-boats Connecticut,
2 S. A. Stevens, and the steamship Othello, and the steam-tug N. B. Starbuck, their engines, &c., in a cause of collision and damage, civil and maritime; and thereupon the libellant alleges and propounds as follows:

First. That this is an action for collision and damage, and the said vessels are now within the jurisdiction of this honorable court.

Second. That during the times hereinafter mentioned the libellant was and now is the true and only owner of the canal boat Sam Morgan, her tackle, apparel, and furniture.

Third. That up to the time of the occurrences hereinafter mentioned, the said canal-boat was tight, staunch, and strong, well and sufficiently manned, tackled, apparelled, and furnished, and in every way fitted for the business in which she was then engaged—of transporting grain between Buffalo and New York— and in every way a second-class vessel, and so rated.

Fourth. That on or about the fifth day of August, 1875, the said boat had received on board at Buffalo, in the State of New York, seventy-seven hundred bushels of wheat, to be therein transported from said port of Buffalo to the port of New York, at the agreed rate of frieght of eight cents per bushel, and having proceeded from said port of Buffalo, laden as aforesaid, through the canal, arrived in safety at Albany, on or about the fifteenth day of August, 1875.

That thereupon, and on or about the sixteenth day of August, 1875, the owners of the said steam tow-boat Connecticut, in consideration of a reasonable sum, then and there agreed to be paid by libellant, undertook and agreed to safely tow said canal-boat, with her said cargo, from Albany down the Hudson River to the port of New York, and thereupon made up a tow of about fifty canal-boats, in about ten tiers
3 of five boats abreast, with libellant's boat on the outside, in the head tier, on the starboard side of said tow, and fastened in said tow, and to said steam tow-boat Connecticut in the usual and customary way.

That the tow thus made up, the said steam tow-boat Connecticut

proceeded with said tow down the Hudson River, and arrived in safety off the Battery in the port of New York, at about six and one-half o'clock on Wednesday morning, the 18th day of August, 1875, where said steam tow-boat Connecticut was joined by the said steam tow-boat S. A. Stevens, as a helper, coming along side on the starboard side of said steam tow-boat Connecticut, to help direct the steerage and course of the Connecticut; and said tow, and said two steam tow-boats proceeded on into the East River with said tow, it being, at the time, light and clear, with no wind of any consequence, and the tide flood.

That about opposite pier 7 in the East River, on the New York side, and about six hundred feet from the end of the said pier, was lying, at that time, a machine used for blasting and drilling a reef in the East River.

That the said steam tow-boats Connecticut and S. A. Stevens shaped their course to go outside of said drilling machine, and proceeded on to a point a little beyond said drilling-machine, and then hauled in towards the New York piers, and stopped and reversed their engines, and brought said boats to a standstill in the water, for the purpose of having the tide swing said tow around up to the East River, and then of drawing said tow down between the piers and said drilling machine, in order that the boats in said tow might be landed in Coenties slip, the usual and customary place for landing canal-boats.

That while said steam tow-boats were at a standstill in the water, as before mentioned, and said canal-boats were swinging on the tide,
4 the steamships Othello, with the steam-tug N. B. Starbuck on her starboard quarter, was seen coming down the East River, about opposite Fulton Ferry slip, on the Brooklyn shore.

That soon after the said steamship and steam-tug were seen by those in the Connecticut and S. A. Stevens, the latter vessel blew their steam whistles, but received no response whateverso from the said steamship and steam-tug, but they continued on at a high rate of speed for said tow. That the said steam tow-boat Connecticut then gave several rapid and successive blasts of her steam-whistle, but the said steamship and steam-tug paid no attention, and gave no response whatsoever, to the same, but came on at a high rate of speed, and ran, with great force and violence, the bow of the said steamship Othello into libellant's boat, the Sam Morgan, on her starboard side, near the first hatch, striking a square and direct blow, and cutting the said canal-boat right in half, so that said canal boat, with all her cargo, sank at once and became a total loss.

That the said steamship and steam-tug then reversed their engines, and ran back up the East River some distance, and waited till said tow had floated up and hauled in to the New York piers, and then said steamship and steam-tug came down again and went out to sea, without offering any assistance whatsoever, to said tow, or making any inquiry in relation to the damage she had done.

Fifth. That said damages occurred solely through the fault and negligence of those in command of and navigating said steam-vessels, among other things—

(1.) On the part of the steam tow-boats Connecticut and S. A. Stevens, in that they did not see the steamship Othello and tug N. B. Starbuck before they did, and in not blowing their whistles before they did, and in not taking said tow in between said drilling machine and
5 the New York pier on a flood tide when there was plenty of room therefor, instead of taking the course they did, and going outside of said drilling-machine, and in swinging so large a tow around in a

narrow river, and producing thereby an obstruction to navigation; and again, when they saw a collision impending on libellant's boat, in not turning and straightening said tow up the East River, and trying, with all the means in their power, to avoid said collision instead of remaining stationary in the water, as they did, and allowing said tow, this libellant's boat being among the number, with the tide running flood, to swing more and more into the face of danger; and again, in undertaking to come into the East River, which is a very narrow river at best, with so large a tow as fifty boats, instead of in part breaking up said tow off the Battery, or in the North River, so that the portions of the said tow, so broken up, could be more easily, and quickly, and securely managed.

(2.) On the part of the steamship Othello and the steam tug N. B. Starbuck, in not seeing said tow, and this libellant's boat, although it was light and clear and able to be seen at a great distance; in not responding to any whistles of the Connecticut and S. A. Stevens, and in not blowing any whistles whatsoever; in running at too high a rate of speed in the East River and in violation of the statute made and expresly provided therefor; and, further, when they saw that a collision was inevitable, in not reversing their engines and stopping; or, if that in part was actually impossible, in not changing their course and turning the said steamship Othello across said river, instead of maintaining a direct course for said tow, and striking libellant's boat on her broadside, a square and direct blow with the bow of said steamship Othello, and cutting this libellant's boat through and through, as was done.

6 Sixth. That said damages were in no way the fault of, or caused by this libellant, or those on board of said canal-boat, at the time of the said occurrence, but on the contrary, they did everything to avoid the said damage.

Seventh. That the libellant has sustained damages on account of the premises, as follows:

His said canal boat became a total loss, and together with her tackle, apparel, and furniture, on board of same, was of the full and fair value of four thousand dollars; the freight of the cargo laden on board of said canal boat was at the rate of eight cents per bushel, and amounted to six hundred and sixteen dollars.

The said cargo of grain was of the full and fair marketable value of twelve thousand dollars.

That John Hall, the captain, and George W. Roosevelt, a steersman on said canal boat, also sustained damages on account of said collision, by the loss of their personal effects, as follows:

The said Hall the sum of eight hundred dollars, and the said Roosevelt the sum of one hundred dollars, which claims for damage have been duly assigned to the libellant, and making, in the aggregate of damage, the sum of seventeen thousand five hundred and sixteen dollars, with interest, from the date of said loss.

Eighth. That the payment for the said damages has been demanded and refused.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore, the libellant prays that process in due form of law may issue against the said steam tow-boats Connecticut and S. A. Stevens, and against the steamship Othello and the steam-tug N. B. Starbuck, and that all persons having or pretending to have any interest therein, may be cited to appear and answer all and singular the matters,

7 so as aforesaid propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid and costs, and to condemn the said steam vessels, their engines, &c., to be sold to pay the same, and for such other and different relief in the premises, as shall to law and justice appertain.

MADISON M. CALEB.

Sworn to before me this 30th day of September, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

JAMES K. HILL,
Proctor for Libellant, 62 Wall street, New York City.

(Endorsed:) Libel. Filed September 30th, 1875.

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer of Charles Wilson and Arthur Wilson, claimants and respondents, intervening for their interest in the steamship Othello, her tackle, &c., to the libel and complaint of Madison M. Caleb, for himself, and all others interested in the canal-boat Sam Morgan, her tackle, apparel, and furniture, and the cargo laden thereof, against the steam tow-boats Connecticut, S. A. Stevens, and the steamship Othello, and the steam-tug N. B. Starbuck, their engines, in a cause of collision and damage civil and maritime.

And thereupon these respondents answering, allege and articulately propound as follows:

8 First. Those respondents admit, upon information and belief, the several allegations contained in the first article of the said libel.

Second. These respondents have no knowledge or information as to the several allegations contained in the second article of the said libel, and, therefore, deny the same.

Third. These respondents have no knowledge or information as to the several allegations contained in the third article of the said libel, and, therefore, deny the same.

Fourth. These respondents, as to a large part of the allegations contained in the fourth article of the said libel, have no information or knowledge, and, therefore, deny the same, and that as to such matters stated in said article as they have any knowledge or information they deny the same, except where the same are hereinafter specifically admitted.

Fifth. These respondents, upon information and belief, deny each and every allegation contained in the fifth article of the said libel, except where the same are hereinafter admitted.

Sixth. These respondents neither admit nor deny the several allegations contained in the sixth article of the said libel, but leaves the libellant to make such proof as he may be advised is material or necessary.

Seventh. These respondents, upon information and belief, state that the said steamship Othello forms one of a line of steamers between the port of New York and Hull, in England. That the berth of the said steamer is at pier 44 East River, when in the port of New York, and that her sailing day was on the 18th day of August last, and that

9 morning, at about five o'clock in the morning, the morning being hazy, and the tide strong flood, and the said steamer then lying with her stern out, the lines were cast off, and the steamer backed out

from her berth assisted by the steam-tug N. B. Starbuck. That having backed out clear of the wharves and piers, the said steam-tug pulled her head or slew around head to the tide, and when thus straightened down the river, she was well out into or nearly the middle there of. That the said steamer having been thus headed down proceeded down the river at a slow rate of speed. That at five o'clock and twenty-five minutes the tug cast off from towing ahead, the steamer then having complete command of herself, and came alongside of the starboard quarter of the said steamship, and then made fast for the purpose of taking off the luggage of a passenger.

That after the said steamer had thus got under way, a steamboat, which turned out to be the steamer Connecticut, was discovered off, well off the port bow of the said steamer, and ahead of her and running in parallel lines, or substantially so, with the said steamer, and upon a course, which, if both vessels kept their respective courses, would have carried them a safe distance apart. The said steamer having a very large fleet of canal boats in tow, made up of a large number of tiers, and which were towed by a hawser extending from the stern of said steamboat some five or six hundred feet. That while the said steamer was keeping slowly and steadily in her course down the East River, the said steamboat having a steam-tug along her starboard side, which turned out to be the S. A. Stevens, without any previous signal or indication of her intention so to do, suddenly changed her course towards the New York shore and across the bows of the said steamer. That the instant the change was made on the part of the said steamboat indicating her intention to cross the bows of the said steamer, the bells were sounded to stop and back, and at the same time, the steam-tug N. B. Starbuck was hailed to aid the steamer by backing strong, all of which orders and hail were instantly and promptly obeyed. That the said steamboat Connecticut kept her headway there by bringing her tow gradually broadside to the tide, until she had crossed the bows of the steamship, not only her own length, but also the length of the hawser by which she was towing the said tow, and until the hawser tier of the said tow had been drawn opposite to or abreast the stern of the starboard boat in said tow, being the said canal-boat Sam Morgan. That in the mean time the said tow was pulling the full strength and power of the full flood, and was being rapidly swept up the East River, and which velocity was increased by the stopping of the machinery of the steamboats. That before the actual collision, the headway of the said steamship had been very nearly, if not entirely overcome, and the sweeping force of the tide swept the broadside of the said canal-boat upon and against the stem of the said steamship, and thus causing the injury by which she sunk.

Eighth. That the said collision was caused, as these respondents allege upon information and belief, among other reasons and causes, in the said steamboat Connecticut attempting to tow and control by a long hawser an immense tow which, in a tide way, is substantially uncontrollable in a narrow and crowded channel; in attempting to tow at all such a tow in such waters; in not, at proper place, breaking up said tow into smaller parcels before attempting to land the same, and either anchoring the same or placing the same under the control of other steam-tugs; in not keeping on her course until she and the said steamer had passed one another; in not giving any signal before changing her course; in changing at all in front of the stem of a large steamer under headway; in making the change when so near the steamer that she could not clear her with herself and tow; in making a change with

11 an extended tow so as to bring the tow broadside to the tide, and thus losing the little control she had over them; in not stopping where she saw a collision was imminent, in time to allow the steamer to have passed over the hawser by which the said steamboat was towing the said tow.

That, among other things, the said steamboat S. A. Stevens was in fault, if employed as a helper, in not having so placed herself in reference to the said tow; that she could measurably have controlled it while in the tide way; and also in acting in unison with the said steamboat Connecticut in all her manoeuvres in regard to said collision, and that by these specifications of fault, the respondents do not intend to relieve either the said canal-boat or the other vessels, except the steamer, from fault. These respondents allege that the navigation of the said steamer was without fault. That the only thing it was possible for the said steamer to do upon the change of course of the said steamboat, was to stop and back, and which was promptly done.

Ninth. That these respondents, upon information and belief, admit that the said collision caused some damage, but he denies that the damages sustained are correctly stated in the sixth article of the said libel; and they deny that either the said canal-boat or her cargo, if she had one, was necessarily a total loss; and they deny that the libellant, or any one on his behalf, took necessary and proper measures to save the said vessel and the property on board; and these respondents deny each and every other allegation contained in the sixth article of the said libel.

Tenth. These respondents are advised and believe and therefore allege that the libellant has no right to bring this action in behalf of himself and others; and they deny that he has any right to maintain this action for the loss and damage to said cargo; or that as assignee, he has any right to maintain this action against the steamer Othello; or

12 that as assignee, he has any lien upon the said steamer; and they claim the same benefit and advantage as if they had specifically excepted to said libel in said cause.

Eleventh. These respondents neither admit or deny the jurisdiction of this honorable court.

Wherefore, these respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and otherwise right and justice to administer in the premises, and that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. R. BEEBE, *Attorney.*

Sworn to before me, this 15th day of November, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

BEEBE, WILCOX & HOBBS,
Proctors for Respondents.
BEEBE, *Advocate.*

(Endorsed:) Answer of steamship Othello filed.

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

And now, William H. Foote, of the city of Brooklyn, and Samuel Schuyler, of Albany, in the State of New York, intervening for their interest, as owners of the steamboat Sarah A. Stevens, appear before

this honorable court, and, for answer in behalf of said steamboat and themselves, as her claimants, to the libel and complaint of Madison
13 M. Caleb against the said steamboat and the steamboat Connecticut, and the steamship Othello, and the steam-tug N. B. Starbuck, their engines, &c., in a cause of collision and damage, civil and maritime, allege and propound as follows:

First. That these respondents were, before the alleged collision in said libel mentioned or referred to, and ever since have been, and are now, sole owners of the said steamboat S. A. Stevens, her engines, tackle, apparel and furniture.

Second. They admit that all said steamboats and vessels, in the first article of said libel referred to, were, at the time of filing said libel, within the jurisdiction of this honorable court.

Third. Whether the libellant, during the time in said libel mentioned, was or is the owner or the only owner of the said canal-boat Sam Morgan, her tackle, apparel and furniture, as alleged in the second article of said libel, these respondents have no knowledge, nor any information thereof, sufficient to form a belief, and therefore do not admit the same.

Fourth. These respondents admit that the allegations in the third article of the libel, respecting the condition and equipment of the canal-boat Sam Morgan, are substantially true.

Fifth. As to the matters alleged in the fourth article of said libel, these respondents allege and show to the court—

That they have no knowledge or information thereof sufficient to form a belief of the fact or date of receipt by the said canal-boat Sam Morgan, at Buffalo, of the quantity of wheat alleged in said article to be transported from said port of Buffalo to the port of New York, nor of the rate of freight, as alleged therein, and therefore do not admit, but deny, their allegations in respect to these particulars.

14 They admit, on information and belief, that said canal-boat, with such quantity of wheat as she had on board, arrived through the canal at Albany on or about the fifteenth day of August, 1875.

And as to the residue of the matters in said article alleged, they answer on information and belief, as follows:

That the steamboat Connecticut, in the prosecution of the business in which she was engaged as a steam-tug, in towing boats, barges, and other vessels on the Hudson River, between Albany and New York, and intermediate places, left the city of Albany, bound for New York, on Monday, the sixteenth day of August, 1875, between four and five o'clock a. m., with such boats, barges, and other vessels in her tow as had applied to be towed by her down the river from Albany to their places of destination, and were taken in her tow there, among which was the canal-boat Sam Morgan, bound for the usual landing place of like canal-boats on the East River, in the port of New York, which the said steamboat Connecticut, by her agents, agreed, or had agreed, in consideration of the agreed rate of towage, to be paid by the master or owner of such canal boat, to tow to New York, with the other boats and barges applying and taken in tow, under the obligation to use all ordinary and reasonable care and skill in the performance of such service, and under no other or greater obligation for the safety of said boat and cargo.

That the tow of said steamboat Connecticut, leaving Albany, as aforesaid, was made up of, not exceeding in all, thirty-two boats, barges and vessels, in about six tiers or rows, of five boats abreast, with the boat Sam Morgan on the outside in the head tier, on the starboard side of that tier, which said boats were fastened or tied together in the usual

manner, and the whole towed aft the steamboat by hawsers from the head tier to the steamboat, in the usual and customary way.

15 That on her passage down the river she picked up other boats at intermediate places, and dropped some of those taken by her in tow at Albany, so that when the Connecticut had arrived off the Battery, in New York, in the North River, and thereafter, the number of boats in tiers or rows in her tow, towed astern by hawsers, did not exceed twenty-five boats, in five rows of five abreast.

That the Connecticut arrived with the boats in her tow which were bound to their landing place on the East River, including the canal boat Sam Morgan, in good safety off the Battery, in the North River, in the port of New York, about five o'clock in the morning of Wednesday, the eighteenth day of August, 1875.

Before coming down off the lower end of the city, and when about off Bull's Ferry, the hawsers, by which the boats aft were towed, were shortened, as usual, to secure better control of the boats towed, and the Connecticut was joined by the said steamboat Sarah A. Stevens when off pier two, North River, as a helper, to assist the Connecticut with her tow in going around into the East River, and in coming around into the East River the said helper was on her starboard side, to help direct the steerage and course of the Connecticut and her tow.

That before and when the Connecticut, with the boats in her tow, were going around into the East River, the tide in the North River was toward the last of the ebb, and the tide in the East River was beginning to flow up that river and flood; that there was no wind of any consequence; that the little there was of it was from the northeast. The weather was clear, and it was broad daylight.

That when the Connecticut was about going around off the south end of the Battery into the East River, there were vessels at anchor on the New York side of the mouth or entrance of the East River to the southward of the Battery, obstructing the passage into the East River, on the New York side of its mouth, and there was a machine used

16 for drilling and blasting rocks under water at anchor, upon or in close proximity to a reef under water, known as Coenties Reef, in the East River, about opposite pier 7, on the New York side, and from six to eight hundred feet, or thereabouts, out in the river, from the line of the ends of the pier.

That, to avoid damage from those obstructions in entering the East River and in bringing her said tow to their usual landing places, between piers 2 and 9, on the New York side of the East River, and in the exercise of due care, the Connecticut entered and passed into the East River, on the southerly side of its mouth or entrance, on a course which was entirely free from obstructions, to the southward of the buoy on Diamond Reef, so called, lying off between Governor's Island and New York, in the East River; and after the Connecticut and her tow had passed beyond, off said Diamond Reef, her course was shaped up the river, and then inclined in toward the New York shore, to pass with her tow off the up-river on easterly side of said drilling machine, and thence round to the northward and down the river, inside of said drilling machine, and off against the landing places, as aforesaid, with the boats in her tow. That, in view of the obstructions aforesaid of vessel off the south end of the Battery, on the New York side of the river, and of said drilling and blasting machine, on that tide the course so as above described was the best practicable and an entirely safe course for the Connecticut and her tow in bringing said boats in her tow to their aforesaid landing, and a usual and proper course.

That after the Connecticut had hauled in towards this city, and was standing in a direction by the compass about north, quartering across and up the river, but somewhat more inclined in toward the city than up, and was off to eastward of said drilling machine, her engine was stopped, while that of her helper, the S. A. Stevens, on her star-
17 board side, was working ahead, and in co-operation with the action of the tide on the boats towed astern, was slowly turning the Connecticut and tow around so as to bring their sterns up the river, so that the Connecticut with her tow might pass down inside of said drilling machine to drop her boats off against their aforesaid landing places.

That while the Connecticut was so standing quartering across and up the river as aforesaid, and was stopped, and with her tow was in the act of coming around as aforesaid, in stays, as it were, making little or no headway through the water, the steamship Othello, under steam, with a tug on her starboard quarter, which afterwards was known to be the Starbuck in the libel mentioned, was observed from the Connecticut, the said steamship Othello, with the said steam-tug Starbuck on her starboard quarter, then being about off the Brooklyn Ferry slip of the Fulton Ferry, and on the Brooklyn side of the river, and half a mile and more distant from the Connecticut, and bound down the river; and thereupon two blasts of the steam whistle of the Connecticut were blown as a signal to the Othello to pass to the eastward and southward, on which side there was plenty of unobstructed room for her to pass in safety.

That the persons in charge of the Connecticut watching said steamship Othello closely, receiving no response whatever from her or said tug on her starboard quarter to said signal by the steam whistle from the Connecticut, and observing that the Othello and tug were making a course down the river at a high rate of speed, and on a line of movement pointing towards the Connecticut tow, an alarm signal was blown from the Connecticut to said steamship, and the engine of said helper, S. A. Stevens, on the starboard side of the Connecticut was immediately stopped.

That no response was made from the Othello or her tug to either of these signals from the Connecticut, nor so far as it appeared to
18 those on board the Connecticut was any attention paid to the presence of the Connecticut or her tow by those on board the Othello or her tug; and notwithstanding these signals from the Connecticut, and although the Connecticut and the boats in her tow were in plain sight, and their helplessness evident to avoid a collision from a vessel running into them, while coming around as aforesaid, the person in charge of and navigating said steamship Othello, through their mismanagement or carelessness, made and kept a course directed for the boats in tow of the Connecticut, and came on at a high rate of speed and ran with great force and violence, the stem of said steamship Othello, into the canal-boat Sam Morgan, in the head tier of the Connecticut's tow, on the starboard side, striking her on her starboard side and cutting into her about half way through, and causing her to sink within a very short time thereafter, with whatever was on board, and breaking other boats in the tow adrift and causing them to be jammed and thrown together and against each other.

Whether the engine of said steamship or her tug was reversed before the blow these respondents have no knowledge or information sufficient to form a belief, but there was no appreciable diminution of her speed before the blow which was given by the Othello at a high rate of speed and was very heavy.

After she struck and cut into the said canal-boat Sam Morgan, as aforesaid, the Othello backed off and up the river some distance, and waited until the Connecticut, with the boats not broken adrift, had hauled in along the New York shore to their landing places aforesaid, and the other boats were brought in by the Stevens and Starbuck, which last had let go from said steamship, and then said steamship came down the river again and went to sea.

19 That the time of the collision was about 5½ o'clock a. m.

And these respondents deny, on information and belief, each and every allegation in said fourth article of the libel contained, not hereinabove admitted or otherwise controverted, except as to the allegation that said canal-boat Morgan and cargo became, by the sinking thereof as aforesaid, a total loss, of which they have no knowledge or information sufficient to form a belief, and therefore deny the same.

Sixth. As to the matters alleged in the fifth article of said libel, these respondents allege, on information and belief, that neither said collision, or any damage alleged in said libel as caused thereby or arising therefrom, was caused or occurred through any mismanagement, negligence, or fault of said Sarah A. Stevens, or of those in command of or navigating said steamboat, either in any of the particulars alleged against her in said article of the libel, or in any of them, or in any other particulars. And it denies each and every of the allegations of fault alleged against said steamboat Sarah A. Stevens, or against those in command of or navigating her.

They admit and allege that said collision, and the damage therefrom to said libellant, occurred through the sole mismanagement and fault of said steamship Othello, or of said steam-tug Starbuck, alleged in said fifth article of the libel, of both, or of one or the other, or other gross negligence or mismanagement of said steamship Othello in not responding to the signals from the Connecticut, or in not keeping a proper lookout, and in running suddenly into the tow, and without timely measure to avoid any collision or to break its force.

Seventh. In answer to the sixth article of the libel, and the matters therein contained, they admit that said collision and the damages necessarily arising therefrom were in no way caused by said libellant,

20 or those on board said canal-boat at the time of said collision, and that they did what they could to avoid said collision and damage necessarily arising therefrom.

Eighth. That these respondents know nothing of the amount or particulars of the damage alleged in the seventh article of the libel, and therefore deny the same and every part thereof, and allege that no part thereof is chargeable to the said steamboat Sarah A. Stevens, or to those respondents, as owners.

Ninth. And these respondents further allege that said steamboat, S. A. Stevens, was not, nor were these respondents, as her owners, a party or parties to any contract or agreement for the towing of said canal-boat, Sam Morgan, nor under any obligation to her owner for or in respect of her towing; that the only connection of the said S. A. Stevens with the transactions alleged in said libel was as a helper, employed by and in behalf of said steamboat Connecticut and owners, to assist said Connecticut and tow in steering, under the direction and in obedience to the orders of her pilot, and to do what might be required by said Connecticut or her master, or pilot in charge, in aid of the navigation of said Connecticut and tow, and of her performance of the towing service undertaken by her, under the orders of said master and pilot of the Connecticut; that whatever was done by the S. A. Stevens was done in the

performance of the lawful directions and orders of said master or pilot of the Connecticut, and that, by reason of the premises, neither the said S. A. Stevens, nor these respondents as her owners, are responsible therefor, nor for any acts of omission to said libellant.

Tenth. That these respondents have no knowledge or information of any demand of said damages from said S. A. Stevens, or these
21 respondents, except by including her in the libel; but they do not admit any liability therefor, or any part thereof, by said steamboat Sarah A. Stevens, or her owners.

Eleventh. That they are informed and believe, all and singular, the premises alleged in this answer are true.

Wherefore, they pray that this honorable court would be pleased to pronounce against the libellant as to said steamboat Sarah A. Stevens, her engine, tackle, apparel, &c., and these respondents intervening for their interest therein, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises.

WM. H. FOOTE,
For Self & Co., Owners.

ABRAM VAN SANTVOORD,
Proctor and Advocate for the S. A. Stevens.

SOUTHERN DISTRICT OF NEW YORK:

William H. Foote, being sworn, says that he is one of the claimants and owners of the Sarah A. Stevens; that he has read the foregoing answer, and knows the contents thereof, and that the same is true to his knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

WM. H. FOOTE.

Sworn to before me this 24th day of November, 1875.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

(Endorsed:) Answer of S. A. Stevens. Filed November 27th, 1875.

22 To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

And now, Schuyler's Steam Towboat Line, a corporation duly incorporated under the laws of the State of New York, having its residence or principal office in the city of Albany, in said State, intervening for its interest as owner of the steamboat Connecticut, appears before this honorable court, and for answer on behalf of said steamboat and itself, as her claimant to the libel and complaint of Madison M. Caleb, for himself and all others interested in the canal-boat Sam Morgan, her tackle, apparel, and furniture, and the cargo laden on board thereof, against the said steamboat Connecticut, together with the S. A. Stevens, and the steamship Othello, and the steamtug N. B. Starbuck, their engines, &c., in a cause of collision and damage, civil and maritime, alleges and propounds as follows:

First. That this respondent, Schuyler Steam Towboat Line, was, before the alleged collision in said libel referred to, and ever since has been and is, sole owner of the said steamboat Connecticut, her engine, tackle, apparel, and furniture.

Second. It admits that said steamboats, at the time of filing said libel, were within the jurisdiction of this honorable court.

Third. Whether the libellant, during the times in said libel mentioned,

was or is the owner, or the only owner, of the said canal-boat Sam Morgan, her tackle, apparel, and furniture, as alleged in the second article of said libel, this respondent has no knowledge, nor any information thereof, sufficient to form a belief, and therefore does not admit the same.

23 Fourth. This respondent admits that the allegations in the third article of the libel, respecting the condition and equipment of the canal-boat Sam Morgan, is substantially true.

Fifth. As to the matters alleged in the fourth article of said libel, it alleges and shows to the court—

That it has no knowledge or information thereof sufficient to form a belief of the fact or date of receipt by the said canal-boat Sam Morgan at Buffalo of the quantity of wheat, as alleged in said article, to be transported from said port of Buffalo to the port of New York, nor of the rate of freight as alleged therein, and therefore does not admit, but denies the allegations in respect to those particulars.

It admits, on its information and belief, that said canal-boat, with such quantity of wheat as she had on board, arrived through the canal at Albany on or about the 16th day of August, 1875.

And as to the residue of the matters in said article alleged, it answers, on information and belief, as follows:

That the steamboat Connecticut, in the prosecution of the business in which she was engaged as a steam-tug in towing boats, barges, and other vessels on the Hudson River, between Albany and New York and intermediate places, left the city of Albany, bound for New York, on Monday, the 16th day of August, 1875, between 4 and 5 o'clock p. m., with such boats, barges, and other vessels in her tow as had applied to be towed by her down the river from Albany to their place of destination, and were taken in her tow there, among which was the canal-boat Sam Morgan, bound for the usual landing place of like canal-boats on the East River, in the port of New York, which the said steamboat Connecticut, by her agents, agreed or had agreed, in consideration of the agreed rate of towage to be paid by the master or owner of said canal-boat

24 to tow to New York, with the other boats and barges applying, and taken in tow under the obligation to use all ordinary and reasonable care and skill in the performance of such service, and under no other or greater obligation for the safety of said boat and cargo.

That the tow of the said steamboat Connecticut, on leaving Albany as aforesaid, was made up of, not exceeding in all, thirty-two boats, barges, and vessels, in about six tiers or rows of five boats abreast, with the boat Sam Morgan on the outside in the head tier, on the starboard side of that tier, which said boats were fastened or tied together, in the usual manner, and the whole towed aft the steamboat by hawsers from the head tier of the steamboat, in the usual and customary way.

That on her passage down the river she picked up other boats at intermediate places and dropped some of those taken in her tow at Albany, so that when the Connecticut had arrived off the Battery in New York, in the North River, and thereafter, the number of boats in tiers or rows in her tow, towed astern by hawsers, did not exceed twenty-five boats, in five rows of five abreast.

That the Connecticut arrived with the boats in her tow which were bound to their landing places on the East River, including the canal-boat Sam Morgan, in good safety, off the Battery, in the North River, in the port of New York, about 5 o'clock in the morning of Wednesday, the 18th day of August, 1875.

Before coming down off the lower end of the city, and when about off

Bull's Ferry, the hawsers by which the boats aft were towed were shortened, as usual, to secure better control of the boats towed, and the Connecticut was joined by the steam-tug Sarah A. Stevens when off pier two, North River, as a helper to assist the Connecticut with her tow on going round into the East River, and on coming round into the East
25 River the said helper was on her starboard side, to help direct the steerage and course of the Connecticut and her tow.

That before and when the Connecticut, with the boats in her tow, was going round into the East River, the tide in the North River was toward the last of the ebb, and the tide in the East River was beginning to flow up that river, in its flood; that there was no wind of any consequence; that the little there was of it was from the northeast; the weather was clear, and it was broad daylight.

That when the Connecticut was about going round off the south end of the Battery, into the East River, there were vessels at anchor on the New York side of the mouth or entrance of the East River, to the southward of the Battery, obstructing the passage into the East River, on the New York side of its mouth, and there was a machine used for drilling and blasting rocks, under water at anchor, upon or in close proximity to a reef under water, known as Coenties reef in the East River, about opposite pier 7, on the New York side, and from six to eight hundred feet or thereabouts, out in the river from the line of the ends of the piers.

That, to avoid danger from those obstructions in entering the East River, and in bringing her said tow to their usual landing places between piers two and nine on the New York side of the East River, and in the exercise of due care, the Connecticut entered and passed into the East River on the southerly side of its mouth or entrance, on a course which was entirely free from obstructions, to the southward of the buoy on Diamond Reef, so-called, lying off between Governor's Island and New York in the East River; and after the Connecticut and her tow had passed beyond off said Diamond Reef her course was shaped up the river and thence inclined in toward the New York shore, to pass with her tow, off the up-river or easterly side of said drilling machine,
26 and thence round to the northward and down the river inside of said drilling machine, and off against the landing places as aforesaid, of the boats in her tow.

That, in view of the obstructions aforesaid, of vessels off the south end of the Battery, on the New York side of the river, and of said drilling and blasting machine on that tide, the course, so as above described, was the best practicable, and an entirely safe course for the Connecticut and the tow, in bringing said boats in her tow to their aforesaid landing, and a usual and proper course.

That, after the Connecticut had hauled in toward the city, and was standing in a direction by the compass about north, quartering across and up the river, but somewhat more inclined in toward the city than up, and was off to eastward of the said drilling machine, her engine was stopped, while that of her helper, the S. A. Stevens, on her starboard side, was working ahead and in co-operation with the action of the tide on the boats towed astern, was slowly turning the Connecticut and tow around, so as to bring their sterns up the river, as that the Connecticut, with her tow, might pass down inside of said drilling machine, and drop her boats off against their aforesaid landing places.

That while the Connecticut was so standing, quartering across and up the river as aforesaid, and was stopped, and with her tow was in the act of coming round as aforesaid, in stays, as it were, making little or

no headway through the water, the steamship Othello, under steam, with a tug on her starboard quarter, which afterwards was known to be the Starbuck in the libel mentioned, was observed from the Connecticut, the said steamship Othello, with said tug Starbuck on her starboard quarter, then being about off the Brooklyn ferry slip of the Fulton ferry and on the Brooklyn side of the river, and half a mile and more
27 distant from the Connecticut, and bound down the river, and thereupon two blasts of the steam whistle of the Connecticut was blown as a signal to the Othello to pass to the eastward and southward, on which side there was plenty of unobstructed room for her to pass in safety.

That the persons in charge of the Connecticut watching said steamship Othello closely, receiving no response whatever from her or said tug on her starboard quarter to said signal by the steam whistle from the Connecticut, and observing that the Othello and tug were making a course down the river at a high rate of speed, and on a line of movement pointing toward the Connecticut's tow, an alarm signal was blown from the Connecticut to said steamship, and the engine of said helper, S. A. Stevens, on the starboard side of the Connecticut was immediately stopped.

That no response was made from the Othello or her tug to either of these signals from the Connecticut, nor, so far as it appeared to those on board of the Connecticut, was any attention paid to the presence of the Connecticut or her tow by those on board the Othello or her tug, and notwithstanding these signals from the Connecticut, and although the Connecticut and the boats in her tow were in plain sight, and their helplessness evident to avoid a collision from a vessel running into them while coming around, as aforesaid, the persons in charge of and navigating said steamship Othello, through their mismanagement or carelessness, made and kept a course directed for the boats in tow of the Connecticut, and came at a high rate of speed, and ran with great force and violence the stem of the Othello into the canal-boat Sam Morgan in the head tier of the Connecticut's tow on the starboard side, striking her on her starboard side, and cutting into her about halfway through, and causing her to sink within a very short time thereafter, with whatever
28 was on board, and breaking other boats in the tow adrift, and causing them to be jammed and thrown together and against each other.

Whether the engine of said steamship or her tug was reversed before the blow, this respondent has no knowledge or information sufficient to form a belief; but there was no appreciable diminution of her speed before the blow, which was given by the Othello at a high rate of speed and was very heavy.

After she struck and cut into the said canal-boat Sam Morgan, as aforesaid, the Othello backed off and up the river some distance, and waited until the Connecticut, with the boats not broken adrift, had hauled in along the New York shore to their landing places aforesaid, and the other boats were brought in by the Stevens and Starbuck, which last had let go from said steamship, and then said steamship came down the river again and went to sea.

That the time of the collision was about 5½ o'clock a. m.

And these respondents deny on information and belief each and every allegation in said fourth article of the libel contained, not hereinbefore admitted, or otherwise controverted, except as to the allegation that said canal-boat Morgan and cargo became, by the sinking thereof as aforesaid, a total loss, of which it has no knowledge or information sufficient to form a belief, and therefore denies the same.

Sixth. For answer to the matters alleged in the fifth article of said libel, this respondent alleges, on information and belief, that neither said collision, nor any damage alleged in said libel, as caused thereby, or arising therefrom, was caused or occurred through any mismanagement, negligence, or fault of said steamboat Connecticut, or of those in command of or navigating said steamboat, either in the particulars
29 alleged against her in said article of the libel, or in any of them, or in any other particulars; and it denies each and every of the allegations of fault alleged against said steamboat Connecticut, or against those in command of and navigating her, and it avers that in proceeding on entering the East River as in this answer aforesaid, and in observing and doing as aforesaid, the persons in command of and navigating said steamboat Connecticut did all they could do, and all they could reasonably be required to do, under the obligation of this respondent to said libellant to avoid said collision, and it denies each and every allegation of fault alleged against her helper, the S. A. Stevens.

It admits and alleges that said collision, and the damages therefrom to said libellant, occurred through the mismanagement and fault of said steamship Othello, or of said steam-tug Starbuck, alleged in said fifth article of the libel of both or of one or the other, or other gross negligence or mismanagement of said steamship Othello, in not responding to the signals from the Connecticut, or in not keeping a proper lookout, and in running recklessly into the tow, and without timely measures to avert said collision or to break its force.

Seventh. In answer to the sixth article of the libel and the matters therein contained, it admits that said collision and the damages necessarily arising therefrom were in no way caused by said libellant or those on board said canal-boat at the time of said collision, and that they did what they could to avoid said collision and damage necessarily arising therefrom.

Eighth. That this respondent knows nothing of the amount or particulars of the damages alleged in the seventh article of the libel, and therefore denies the same and every part thereof, and alleges that no part thereof is chargeable to the said steamboat Connecticut or to this respondent as her owner.

30 Ninth. That this respondent has no knowledge or information of any demand of said damages from said Connecticut, or this respondent, except by including her in the libel, but it does not admit any liability therefor, or any part thereof, by said steamboat Connecticut or this respondent as her owner.

Tenth. That it is informed and believes that all and singular the premises alleged in this answer are true.

Wherefore, it prays that this honorable court will be pleased to pronounces against the libellant as to said steamboat Connecticut, her engine, tackle, apparel, &c., and this respondent intervening for its interest therein, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

SCHUYLER STEAM TOWBOAT LINE,
By GEORGE L. GARLICK, *Agent.*

C. VAN SANTVOORD,
Proctor and Advocate for Claimant of the Connecticut.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George L. Garlick, being duly sworn, says that he is the agent in the city of New York of the steamboat Connecticut, and of her claimant,

Schuyler Steam Towboat Line; that he has read the foregoing answer, and knows the contents thereof, and that the same is true to his knowledge, except as to the matters stated therein on information and
31 belief, and that as to those matters he believes it to be true.

GEORGE L. GARLICK.

Sworn to before me, this 24th day of November, A. D. 1875.

EDWARD L. OWEN,

U. S. Commissioner for the southern district of New York.

(Endorsed:) Answer of St. Bt. Connecticut. Filed.

To the honorable L. Benedict, judge of the district court of the United States, within and for the eastern district of New York:

The answer of Jirah L. Ferguson and Jacob Brandow, owners of the steam-tug N. B. Starbuck, her engines, &c., to the libel and complaint of Madison M. Caleb, and all others interested in the canal-boat Sam Morgan against the steamboats Connecticut and S. A. Stevens, and the steamship Othello and steam-tug N. B. Starbuck, their engines, &c., in a cause of collision and damage, civil and maritime, allege and articulately propound as follows:

First. These claimants admit that this is an action for collision, civil and maritime, and that at the time of the filing of said libel the said steam tug N. B. Starbuck was within the jurisdiction of this court, but they have no knowledge or information sufficient to form a belief as to whether or not the other of said vessels were within the jurisdiction of this court, and therefore deny the same.

Second. They have no knowledge or information sufficient to
32 form a belief as to the several allegations of the second and third articles of the libel, and therefore deny the same.

Third. These claimants admit that before and at the time of collision the engine of the steam-tug was reversed, as alleged in the fourth article of said libel, but they deny that at any time prior thereto said steam-tug was going at a high rate of speed. They have no knowledge or information sufficient to form a belief as to the other allegations of said article of libel, and therefore deny the same.

Fourth. These claimants deny each and every allegation of fault and negligence alleged in the fifth article of the libel on the part of the N. B. Starbuck. They have no knowledge of the other allegations of the said article of the libel, and therefore deny the same.

Fifth. These claimants have no knowledge of the allegations of the sixth article of the libel, and therefore neither admit nor deny the same, but leave the libellant to such proof as he may be advised.

Sixth. They have no knowledge or information sufficient to form a belief as to whether or not the libellant has sustained the damages alleged in the seventh article of the libel or any other damage, and therefore deny the same.

Seventh. They deny that payment of said alleged damages has been demanded of them.

Eighth. They admit the allegations of the ninth article of the libel.

Ninth. These claimants allege that on the morning of the 18th day of August, 1875, the steam-tug N. B. Starbuck was employed by the master of the steamship Othello (then bound on a voyage to sea) to assist said steamship in backing out of her berth at pier 44 East River. That said steam-tug made fast to said steamship, and said steamship having
33 backed out clear of the wharves and piers, said steam-tug pulled her head around to the tide and straightened said steamship down

the river. That thereupon said steamship and steam-tug proceeded down the river, and when about off Fulton Ferry, said steam-tug was cast off and thereafter ceased to render any assistance in towing said steamship.

That after casting off, as aforesaid, the master of said steamship, or some one acting in his behalf, requested said steam-tug to come alongside and take off the baggage of a passenger who had been left; that thereupon said steam-tug came alongside on the starboard quarter and made fast to said steamship, with one line from the bow of said steam-tug to the forward part of said steamship, and was in that position and in the act of receiving said bag'age from said steamship when the collision happened. These claimants therefore insist that the said steam-tug had no power over or control of said steamship or her movements, and that, so far as said steam-tug is concerned, she did not cause or tend in any manner to cause said collision, and that therefore they are in no manner liable therefor.

Tenth. In verification whereof, if denied, these claimants pray leave to refer to the depositions and proofs to be exhibited on the trial hereof.

Wherefore they pray that they may be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

JIRAH L. FERGUSON.

Subscribed and sworn to before me this 30th day of November, 1875.

EDWARD L. OWEN,
U. S. Commissioner.

OWEN & GRAY,
Proctors for Claimants.

(Endorsed:) Answer of st. tug N. B. Starbuck. Filed.

34 U. S. district court, eastern district N. Y.

MADISON M. CALEB
vs.
THE STEAMBOAT CONNECTICUT, S. A. STEVENS, Othello, and M. B. Starbuck, their engines, &c.

A. E. CULVER
vs.
THE SAME.

BROOKLYN, *June* 7, 1876.

Before Hon. C. L. Benedict, judge.

Appearances.—J. K. Hill & H. T. Wing, for libel'ts; C. Van Santvoord, for Connecticut; Abm. Van Santvoord, esq., for S. A. Stevens; Messrs. Beebe, Wilcox & Hobbs, for the Othello; Messrs. Owen & Gray, for the Starbuck.

H. T. Wing, esq., reads the libel.

C. Van Santvoord reads the answer of the Schuyler Steamboat Line.

Abm. Van Santvoord reads the answer on behalf of the Stevens.

35 Mr. Owen reads the answer for the Starbuck.

Judge Beebe reads the answer on behalf of the Othello.

The pleadings in the second action are considered as read.

Adjourned to June 8, 1876, at 11 a. m.

Mr. Wing reads deposition of JOHN HALL, taken de bene esse on behalf of libellants, as follows:

I hail from New York; my business is that of boating on the canal and Hudson River, and expect to go to Athens on the Hudson River tomorrow.

I knew the canal-boat Sam Morgan. On the 18th of August, 1875, I was the master of her, and had been for over three years; Madison M. Caleb owned the boat during that time; she was a first-class boat; what is called a "Rochester Laker;" was eight years old last June; she was employed in carrying grain from Buffalo to New York, and merchandise back. In August, on the 5th day, we loaded her with red wheat No. 1, in bulk, at Buffalo, took on board 7,700 bushels, and it was consigned to Madison M. Cabel, at New York; we left Buffalo on the evening of the 5th of August last, and came through the canal to Albany, and arrived there on Sunday, 15th of August, all safe; no accident happened to us on the canal; we left Troy, and arrived in Albany at about five o'clock Sunday afternoon, and lay there till Monday morning at ten o'clock; then Mr. Schuyler's agent came and I made an arrangement to tow us down the river, and he asked me if I was willing to take the hawser, and I told him I was. He then sent a tug-boat over beside me, took me up to the steamboat, and the men came off the steamboat and made the lines fast to us in the usual way.

The tow was fully made up at about tow o'clock, and we started on the 16th, at about 4 p. m. The tow was made up in tiers, five boats in a tier; there were between forty-five and fifty boats. And the
36 position of my boat was in the head tier on the starboard side, outside boat, with the starboard hawser; I had two men employed on my boat through the canal, but at Albany one of them left, and the other George W. Rossvelt remained, and he was in the boat to New York. With the tow thus made up the Connecticut proceeded to New York; nothing happened to me on the way down to the city; the Connecticut shortened up her hawsers somewhere between Bull's Ferry and Manhattan market; I could not say what particular place; after the hawsers were shortened I should judge they were about two hundred feet. I mean by that that was the distance between the stern of the Connecticut and the stems of the boats in the first tier; the Connecticut kept on in this way and between piers two and one, North River, she was joined by the steamboat S. A. Stevens. The S. A. Stevens came on the starboard side of the Connecticut; she fastened alongside of her there; no change had been made in the length of the Connecticut, however, from the time of the last change I have spoken of up to the collision; I was on deck when the Stevens joined the Connecticut, and Roosevelt was also. This was the 18th day of August, 1875, about five or half past five o'clock, when the Stevens joined us. The Connecticut and Stevens kept on with the tow. There were some vessels anchored off the Battery on the New York side. The Connecticut and Stevens, as they rounded the Battery, owing to the vessels being anchored on the New York shore, headed more on to Governor's Island than they otherwise would, and in turning into East River kept closer to Governor's Island and heading towards Brooklyn. They kept on this course until they got far enough to give the tow a chance to swing with the tide. Then the Connecticut and Stevens turned and headed towards the New York shore. They went on very slow until they got the hawsers straightened out, and then stopped and let the tow swing with the
37 tide; then she kept on heading right across the river until we were—I mean the Connecticut was—two to two hundred and fifty feet from the drilling machine, as near as I could judge; I could not tell exactly. This was on the Brooklyn side of the drilling machine, towards Wall Street Ferry; and then the Connecticut and Stevens stopped and commenced blowing their whistles; they both blew; each of them blowed twice, two whistles each. Then they stopped for a minute

or more, and then they blew their whistles three or four times; kept blowing pretty steady.

Then the Othello came down and ran right into us, into our boat, the Sam Morgan, striking us ten feet forward of our stern cabin; she struck us a square blow, head on, and cut us right in two; she struck us on the starboard side, and broke through the side and through the bottom, and then right through the keelson of my boat on the opposite side; my boat, just as soon as the Othello backed out, went right down, stern first, cargo and all; she went right down stern first and stood right up on end, bow up, and part of her cabin deck flew off, and that was the last I seen of her; we saved nothing of her. I first saw the steamship Othello when we were rounding the Battery, coming into the East River; she was about opposite the Fulton Ferry. When I first saw her she was headed down the East River. Her course was about the centre of the river. I think she had a tug-boat beside, as I saw the steam coming up on the starboard side, and afterwards saw the tug herself. She came right straight ahead. The Connecticut and the Stevens blew their whistles, but I did not hear any whistle from the steamer. She kept coming right straight ahead on her course till she struck us. There were 4 or 5 men standing in her bow when she struck us. I could not see that she made any preparations to get away. When I first saw her I was on the deck of our boat, and Roosevelt was with me. When I first saw the Othello she was about abreast of Fulton Ferry,
38 about the centre of the river. The Connecticut and Stevens were heading towards the Brooklyn shore when I first saw her. It could not have been over five or ten minutes after I first saw the Othello that the Connecticut and Stevens commenced to turn towards the New York shore, across the course of the Othello, and kept on going more and more across her course, and bringing her tow at right angles to the course of the Othello, across the river towards the drilling machine, which was in the East River, about 700 or 800 feet from the end of pier 7, New York shore. The Connecticut and Stevens, when about 200 feet from the drilling machine on the Brooklyn side, stopped and commenced blowing their whistles. I can't tell how long this was after I first saw the Othello; I had no watch. I can only give but my judgment, as it was about 20 minutes. I heard no whistle from the Othello or the tug. I saw no change in the course of the Othello. The Stevens was by the side of the Connecticut all the time. The Connecticut and Stevens blew their whistles, and men on board hallowed at the Othello and told them to sheer off.

Q. When the Othello struck you, was she coming ahead?

(Objected to as leading.)

A. She was coming ahead; yes, sir.

Q. How do you know?

A. The water was boiling up before her bow, i. e. she was bubblin before the bow just the same as if you should put your finger in t water; that is bubbling up.

When the Othello got within a ship's length of us, I saw the tu e Starbuck. She was on the starboard side of the Othello, fastened t. her, I think. She had a bow-line on, which I saw. I did not notice th water in front of her bow. We could have done nothing more than we did do to avoid the collision.

39 Mr. Beebe reads the cross-examination of John Hall, on behalf of Othello, as follows:

Examined by Mr. BEEBE:

From the time the Stevens came to us I was on deck until just before the collision, when I went below for a moment for my family.

From the time the tow commenced rounding the Battery, up to the time the Connecticut and Stevens commenced turning towards the New York shore, was there any time when the tow straightened up the East River?

A. She always headed towards the Brooklyn shore, until she commenced rounding towards the New York shore.

When she commenced to make a sheer towards the New York shore first, I saw her do it.

Q. How far did the tail end of the tow swing from the east end of Governor's Island?

A. I should think 700 or 800 feet, perhaps more.

The tide had been ebb in the North River, and just commenced to run flood in the East.

Q. Did you notice, so that you are able to swear, abreast of what point on the Brooklyn shore the Connecticut was when she commenced to sheer toward the New York shore? If so, what point was she abreast of?

A. She was about abreast of the iron elevator.

Q. And how far off from it should you think?

A. I should judge a little nearer to the Brooklyn shore than she was to the New York.

Diagram No. 1.

40 Q. Is that elevator between Hamilton Avenue Ferry and the Atlantic Street Ferry?

A. Yes, sir.

Q. Please place upon this paper how the Connecticut was heading when she commenced to make the shear towards the New York shore, supposing the right hand of the paper to be the Brooklyn shore?

A. I have so placed it, and this annexed, marked Diagram 1.

Q. How far did she turn on that shear towards the New York shore, before she stopped for the boats to swing?

A. She turned until she was heading right towards the New York shore, or until she was half way round.

Q. Then she went ahead again?

Yes, sir.

Q. When she stopped the second time, how near do you suppose she had gone ahead towards the New York shore? How many times the length of the Connecticut?

A. I should say she went about three times the length of her.

Q. When she stopped the second time, how near was the tow itself, with respect to the river, or with the heading of the Connecticut?

A. The head tier was heading right straight with the Connecticut when she stopped the second time; the other tiers were swinging.

Q. Before the actual collision, how was the rest of the tow?

A. The tail tier had not yet swung across, but was swinging.

Q. When the Connecticut stopped the second time was the hawser taut, by which she was turning?

A. Yes, sir; it did not keep taut all the time by the swinging of the tow up to the time of the collision.

Q. Was there at any time, when the stem of your boat got
41 nearer to the Connecticut before the collision than 200 feet or the length of the hawser; and, if so, how much?

A. I could not tell; she must have been about half a length of a canal boat; that's my best judgment; my boat is 96½ feet long?

Q. Up to the time the Connecticut stopped the second time, had she blown any whistle?

A. I had not heard any before; that was the first I heard.

Q. Were you so situated that if she had blown any before that time would you have heard it?

A. Yes, sir; I was so situated I could not have failed to have heard it.

Q. Did you notice, so that you are able to state, how many blasts of the whistle the Connecticut blew at that time; and, if so, how many?

A. I don't recollect of hearing her blow but two blasts the first time, then there was a pause of half a minute—might be a little more; then she blew three or four blasts in quick succession.

Q. After stopping a second time she did not start ahead again until after the collision?

A. No, sir.

Q. Did you notice how far the Othello was off when the Connecticut blew the first time?

A. I think I did.

Q. How many lengths of the steamship do you think she was off at that time?

A. Well, I should judge she was five or six of her lengths.

Q. Did you notice what point on the New York shore she was abreast of when the Connecticut blew her first whistle?

A. I did.

Q. What point?

A. Abreast of the Wall Street Ferry.

Q. From that time on to the collision did you see any change in her course?

A. No, sir.

Q. For what part of your boat at that time did she appear to be heading?

42 A. That would be a pretty hard question for me to answer; she appeared to be coming square on to me.

Q. Was there any change of your position to her or hers to you until you came together?

A. No more than we were all the time swinging up with the tide.

Q. Was that true of the whole tow?

A. Yes, sir.

Q. Then, at the time of the collision, the whole length of the Con-

necticut—nearly or quite the whole length of the hawser, and more than one-half of the length of your boat—was between the stem of the Othello and the New York shore, were they not?

A. Yes, sir.

Q. And the balance of the tow was on the port side of the Othello?

A. Yes, sir.

Q. Were you confused or excited when you found there was likely to be a collision?

A. No, sir.

Q. You say when the Othello was 200 ft. off you went down after your family?

A. Yes, sir.

Q. What family had you?

A. I had a wife and two children; they were in bed.

Q. Did you come up on deck with them?

A. I brought one up on my arm and put her on the other boat, and as I was going back the Othello struck her. It was a scene of excitement, but I did not lose my self-possession. I went down a second time and brought the other child up and my wife came up after us. When I got out on deck the second time the Othello was backing away and my boat was sinking. The whole of my boat came up two days afterwards, after she dumped her load. I did not own any part of the boat.

I have been to sea and followed the water otherwise for 25 years; the larger portion of my time has been on canal.

43 Mr. C. Van Santvoord reads the cross-examination of John Hall on behalf of Connecticut and Stevens, as follows:

Examined by Mr. VAN SANTVOORD:

I did not count the boats in the tow. I did not count the tiers. There was something to call my attention to the number in tow at the time I started for Albany, simply it was a pretty large tow.

I swear there were over 25 boats when she left Albany; I think there were some boats dropped off coming down the river, and some taken on.

I don't know how many there were dropped off or taken on; I think there were some dropped off in North River before going around to the East River.

I think a couple of boats were left at Poughkeepsie; I don't recollect whether any were left off after the Connecticut reached New York. I don't recollect whether any were left above 13th street.

I was on deck at the time the Stevens came alongside in the North River. The distance from the Battery to Governor's Island is about a mile. I have been in the habit of going on the East River by daylight in boats. I know where the buoy is off Governor's Island. The Connecticut passed on the New York side of the buoy off Governor's Island. The Connecticut passed from 50 to 100 feet from it and my boat passed on the same side the Connecticut did. When the Connecticut passed that buoy she was heading towards Brook'yn, kind a "cat-a-cornered." At the time the Connecticut was passing that buoy I saw the Othello for the first time. The Othello was opposite Fulton Ferry then, on New York side, in the centre of the river. The New York side of the Fulton Ferry is the highest up.

Q. Have you not got a little mixed about Fulton Ferry?

44 A. I have not measured the distance, but I should say that Fulton Ferry is further up on the New York side. I am quite sure I was on deck as we were coming into the East River, near the bow, and Rosevelt was sitting on the box with me; we were talking, don't

recollect what about. Fulton Ferry on the New York side is higher than the Wall street; and Fulton Ferry slip, on the Brooklyn side, is higher up than the Wall street. There is a quarter of a mile distance between the Fulton Ferry on the Brooklyn side above the Wall Street Ferry on the Brooklyn side. The way the water was boiling up in front of the Othello's bows she was going at the rate of two miles per hour. It was just commencing flood tide. The boats were not swinging up very fast —not fast enough to do them any harm at the time. The boats were not moving up any faster than the tide. The first whistle I heard on the Connecticut was two blasts. I heard no reply from the Othello. I afterwards heard several blasts from the Connecticut; the first was, I understood, to sheer off to the Brooklyn side, or keep to the left. The next whistle, I don't know what it meant, more than that there was danger. I did not notice that the Othello sheered off to the left. I think there was room enough for the Othello to have passed to the left.

(Objected to.)

I did not notice that her headway was stopped at all; I could not tell.

Wall Street Ferry is half a mile up from the Diamond Reef Bouy. Wall Street Ferry was 9 or 10 blocks above where the drilling machine was.

The Connecticut was heading towards New York when she blew her first whistle.

How was she heading with reference to the compass?

I don't know, as I did not know how the compass stands at that place.

45 Q. Did you observe whether the Connecticut was in the up run side of the drilling machine?

A. She was.

Q. And how far from it?

A. Two hundred or two hundred and fifty feet.

Q. Was the Connecticut about coming around inside that drilling machine, on the New York side?

A. She would if she had kept on, but she did not, she stopped.

Q. Did you notice her engine stopping?

A. Yes, sir.

Q. Do you know whether the engine of the Stevens was stopped at that time?

A. That I did not notice.

Q. At the time of that first signal, when the two blasts were blown from the Connecticut, did you notice off from which point on the New York shore or Brooklyn shore the Othello was?

A. In the centre of the river.

Q. Opposite what point?

A. The Wall Street Ferry.

Q. Did you notice a tug with tow, or a tug-boat pass up inside of the Connecticut, and then out towards Brooklyn, about the time of that first signal?

A. No, sir.

Q. Did you notice any tug boat going up along the New York shore, the time of that first signal?

A. I did not.

Q. Did you notice off what point on the Brooklyn or New York shore the Othello was at the time of the second signal from the Connecticut?

A. I did not.

Mr. Beebe reads the recross-examination of John Hall, on behalf of Othello, as follows:

Recross by Ex-Judge BEEBE:

Q. Please, in your own mind, fix the length of time between the time the Connecticut blew there first signals, at the time of the collision, and when I say, now then the whistle has blown?

46 A. After the first witness has stated the time has expired it appears to be fifty seconds.

Q. When you say 200 feet or to the distance of the Connecticut, from the drilling machine, do you mean 200 feet further towards the Brooklyn shore than the drilling machine?

A. Yes, sir; I do.

Q. How much further to the eastward or up river side of the drilling machine?

A. About the same distance.

Mr. Wing reads the redirect examination of John Hall, on behalf of libellants, as follows:

Redirect:

This collision occurred about 1-2 past six o'clock, on the morning of the 18th August, 1875; I fix this time only by hearing the men in the tier say so. It was light, but hazy, and we could see two miles off. I noticed what effect the collision had on the rest of the tow. I see some other boats pretty badly damaged.

Q. In what way?

A. Some of them have their rails and cleets broke off; and one had her stern stove in. That was the boat turning behind the boat that we were turning along side of. I saw how it was done; it was done by the hind tiers running into her. I have crossed over on the Fulton Ferry many times.

Mr. C. Van Santvoord reads the recross-examination of John Hall, as follows:

Recross by Mr. VAN SANTVOORD:

Q. When did you first apprehend danger from collision?

A. When the Connecticut gave the first signal.

Q. Did you think they were coming together at that time?

47 A. No, sir; not at that particular time, because I thought she would shear off; I knew there would be if she did not.

Q. How soon, after that, did you feel any alarm yourself?

A. I sat on the bow, and watched the Othello a few minutes, and I saw she made no change, then I started for my cabin; I was watching her two minutes.

Recross by Judge BEEBE:

If the Connecticut had kept on, and had not stopped there would have been no collision in my judgment.

JOHN HALL.

Subscribed and sworn before me this 31st day of March, A. D. 1876.

JOHN A. OSBORN,
U. S. Commissioner.

Mr. Wing reads deposition of GEORGE W. ROOSEVELT taken *de bene esse* on behalf of libellants, as follows:

I live in Vienna, Oneida County, New York; my occupation is boat-

ing on the canal and Hudson River, as steersman on canal-boats: I have been engaged as such between 10 and 11 years past; I know the boat Sam Morgan; I was steersman on her in August last; I had been on her most two months; I have seen her before that time; she was what is called "Rochester Laker"; she was tight, staunch and strong; I helped load her in Buffalo with wheat, 7,700 bushels in bulk; we left Buffalo on the 5th of August; Captain Hall was on board, and a man by the name of Dunbar; we came through the canal and arrived safely at Albany on the 15th of August, 1875, and were there taken in tow by the
Connecticut; we were in the head tier, on the starboard side,
48 and had the hawser; I don't know how many boats the Connecticut took in tow; on the morning of the 18th of August, 1875; we arrived down the North River, at a point between Manhattan Market and Bull's Ferry, in safety, and there the Connecticut shortened up her hawsers—to what length I could not exactly tell—probably, 200 feet; I proceeded on, and between pier 2 and 1 the Stevens joined the Connecticut, on her starboard side, and proceeded on around the Battery into the East River; the Connecticut and Stevens went on with the tow round the battery into the East River, on the Governor's Island side, heading towards Brooklyn, and kept going steady around towards the New York shore, and when the Connecticut and Stevens got up by the drilling machine, heading across the river, they stopped, and let the tow drift around up the river; the tide was just flood; I first saw the Othello just after we got around the Battery; I was on the bow of my boat; the Othello was up by the Fulton Ferry about the centre of the river; at this time the Connecticut and Stevens were heading in to turn, around the drilling machine; I could not exactly say how far the Connecticut and Stevens were from the drilling machine; when I first saw the Othello the stems of the Connecticut and Stevens were pointing up the East River, towards the New York shore; the Connecticut and Stevens after that changed their direction right across the river towards the New York shore; I heard the whistles blown after the Connecticut and Stevens had turned around across the river, and just as she stopped; the Connecticut and Stevens were part way in between the drilling machine and the New York shore, and we were outside of it, towards Brooklyn; at this time the Othello was about at Wall street; I had
kept watch of her; the (Othello) did not change her course up to
49 that time; the Othello changed her course when about 150 feet from us; changed about 10 feet to port and then back again; our boat did not change, except she was drifting up the river; the Othello came on and struck us, about 10 feet forward of stern cabin on the starboard side, a direct blow; the effect of the blow was that she was cut through her side, bottom and deck, and our boat went down within four or five minutes; when the Othello struck us there was a ripple before her bow; can't say that she was coming ahead other than this ripple; I saw the tugboat along side of the Othello on her starboard quarter; I first saw the tugboat when about 250 feet from us; I could not say whether she was fastenen to the Othello or not; after the Othello struck us she backed out; the tug-boat helped her, I believe; they then backed up the East River, and afterwards went down between Governor's Island and the Battery, and the tug-boat was in the same position on her starboard quarter when I first saw her; when the Connecticut blew her first whistle, I heard no response from the Othello or the Starbuck; after the first whistle was blown, three or four more were blown by the Connecticut or Stevens; no response from the Othello or Starbuck; I saw some men on the Othello and hailed them, and asked

them where they were coming; I got no reply, except men on the bow were laughing; this occurred about six o'clock in the morning, as near as I can tell; it was clear and light; I could see above the Brooklyn Bridge abutments; it was pleasant; I believe the water was smooth; no wind that I remember.

Mr. Beebe reads the cross-examination of Geo. W. Roosevelt, on behalf of the Othello, as follows:

Examined by Mr. BEEBE:

Q. Suppose the right hand side to be Brooklyn, and the model the Connecticut, please place the model on this sheet of paper at the angle which was the most she got to the Brooklyn shore?

50 A. The witness places the model, and says that is it, according to his best recollection; the diagram is marked No. 2, and hereto annexed.

Q. At the time she was on that angle, about what point was she abreast of—on the Brooklyn shore?

(Objected to, because it assumes that she was abreast of Brooklyn shore, whereas the witness has not stated she was abreast of Brooklyn shore at the time of that angle.)

A. About opposite the elevators there.

Q. About what part of the river was she at that time?

A. As near as I can judge, about the middle of the river.

Q. How far, at that time, do you think the tail tier of the tow was to the eastward of Governor's Island?

A. Not a great deal, if any.

Q. Were they so that they would swing clear of Governor's Island?

A. They would.

Q. Was it at that point that the Connecticut commenced to sheer towards the New York shore?

A. It was.

Q. How far did she sheer before she stopped?

A. She got headed mostly around on to the New York shore.

Q. Was the object of her stopping to have her tow swung up across the tide?

A. It was. I think the tide was not running very fast; it was running flood at that time, a mile an hour and increasing. The tide is pretty strong there, but how strong I could not say.

Q. At the time she stopped don't you think she was to the eastward of the centre of the river?

A. I think she was about the centre. Her tow was swinging very little, but was swinging when she started ahead again.

51 Q. Then she ran ahead, and towards the New York shore, until she got about half her length inside the drilling machine, then she stopped again?

A. Yes, sir.

Q. When she stopped again did you look in towards the New York shore?

A. I did; for the purpose of seeing what she was stopping for. I did not notice anything passing either way between her and the New York shore. She ran from the centre of the river to about half her length inside the drilling machine before she stopped again; she blew two blasts of her whistle when she first stopped. She did not blow any whistle until she got abreast of the drilling machine, and that was two blasts. I could not say which came first, the whistles or the stopping, but they

were about the same time. I could form no judgment how near her stem was to the New York pier. I am certain that her stem was inside of the drilling machine at that time.

Q. Was there any time, before the collision, when your boat got nearer to the stern of the Connecticut than the length of the hawser, and, if so, how much?

A. Yes, 42 or 43 feet. The Connecticut blew her whistle besides these two blasts; the blasts were three or four in rapid succession. I could not say what time elapsed between the first two blasts and the second blasts. She did go ahead between the first and the second blowing of whistles sufficient to straighten up her hawser. The hawser was not taut at the time of the collision.

Q. At the time of the collision the entire length of the Connecticut, nearly or quite the length of the hawser, and more than half the length of your boat was between the stem of the Othello and the New York shore?—A. Yes, sir.

Q. At the time the Connecticut blew her two blasts, of which you have spoken, how many lengths of the Othello do you think she was off?

A. May be five or six lengths off.

52 Q. You saw no change in the Othello's course until 150 feet off?

A. No, sir; I was not at all excited.

Q. Did you not think from the time the Connecticut stopped there would be a collision?

A. No; not at that time.

Q. Did you not think that her stopping in the course of the Othello would be likely to produce a collision?

A. Yes, sir.

Q. From the time the Connecticut changed her course towards New York, up to the time of the collision, was the tow all the time swinging up with the tide?

A. Yes, sir.

Q. At the time of the actual collision did you notice how the tow was, with reference to the river or the tide?

A. Yes, sir; the two first tiers was kind of kittering; by kittering I mean heading towards New York and a little up, and the other tiers were slowly swinging up with the tide.

Q. I want you to fix in your mind the time when the Connecticut blew those two blasts and the time when the collision took place; that I want of mental action; I now hold my watch in my hand and when I say now, the first blasts of the Connecticut are blown, and then think and say when the collision took place, so I can count the minutes?

A. The process shows that it was 55 seconds.

Mr. Van Santvoord reads the cross-examination of Geo. W. Roosevelt, on behalf of Connecticut and Stevens, as follows:

Examined by Mr. VAN SANTVOORD:

I have noticed the buoy on the Governor's Island side on the entrance of the East River.

Q. Had the Connecticut passed the buoy off Governor's Island when you first saw the Othello?

53 (Objected to on the ground that the witness has not said he saw the buoy at all on this occasion.)

A. I don't think she had.

I could not say how near she was to it.

I don't know where the Catharine Ferry slip is on the Brooklyn side. I know where the Fulton Ferry slip is on the Brooklyn side. It is just below the abutments of the bridge.

When I first saw the Othello she was opposite the abutments of the bridge.

When I first saw the steamship she was a mile from the Connecticut. When I first saw the steamship the Connecticut was heading towards Brooklyn, but was working in slowly towards the New York shore—coming around. The first stopping of the Connecticut had the effect of slacking the hawsers; they went down in the water. The boats in tow did not swing with the tide until the stopping of the steamboat and the slacking of the hawser, and not then, until the steamboat started ahead again. When the steamboat started ahead again the starboard hawser was tautened first, and that had the effect to hold the head tier up, and those behind began to swing. I did not know of the steamboat starting ahead again after she first stopped, except from th e tauting of the hawsers.

Between the time of the blowing of the second whistle and the collision, I could not say how long it was. There was 11 or 12 feet between our boat and the one astern of me in the tow.

Q. What part of the tow did it seem the Othello was bound to hit before the change of direction on which she came into your boat?

A. She looked as if she was going between our stern and the boat behind us.

When I saw that change I was standing half-way between the middle and bow of our boat when I saw that change.

54 I did not see a man standing on the bow of the boat astern of me.

There was a large space of the river to the south of us for the Othello to pass us. I cannot tell in miles or fractional parts of a mile, or sloops' length the distance. I could not tell whether there was room enough, as I do not know the channel.

Redirect:

I noticed what effect this collision had on the other boats in the tow. It jammed them together, tore off cleats and chocks, and stove in the stern of a boat named Hayes—I believe she was towing under the stern of a boat next to us.

GEORGE W. ROOSEVELT.

Subscribed and sworn to before me this 31st day of March, A. D. 1876.

JOHN A. OSBORN,
U. S. Commissioner.

Mr. Sturgis having left the room while the witness was being cross-examined by Judge Beebe, and stating that he would return in about 15 minutes, and Mr. Sturgis not returning for three quarters of an hour, and the cross-examination having been finished by Judge Beebe & Mr. Van Santvoord, and deposition having been read over and signed by the witness and departed, Mr. Sturgis afterwards returned, and claimed the right to cross-examine the witness, and if not permitted he then objected to the testimony of the witness relating to the tug Starbuck, and moved to strike it out.

Mr. Wing objects on the ground that Mr. Sturgis did not return

within the time he stated, and the witness having signed his deposition, and gone away, Mr. Sturgis is too late to make this objection.

JOHN A. OSBORN,
U. S. Commissioner.

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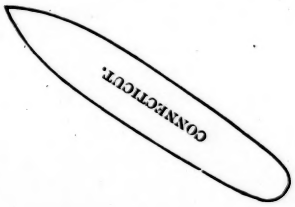

Diagram No. 2.

Mr. Wing reads deposition of Hammil Willse, taken *de bene esse* on behalf libellants, as follows:

I live at Utica, Oneida County, New York; my business is that of a boatman on the canal and Hudson River, and I have been engaged as such nearly forty years; I knew the canal-boat "N. S. Hayes," and knew her in August last; I was captain of her in August last, and have been such ever since she was launched; she is a three years old boat; she is a scow boat; she is owned by A. E. Culver, of Utica, New York, and was in August, 1875; I had loaded the boat in Buffalo, New York, with eight thousand bushels of wheat for New York. This boat of mine was tight, staunch, and strong. We left Buffalo on August 5, 1875, and arrived in safety at Albany on the 15th of August, 1875, and I took the tow the next day in charge of the steamboat Connecticut; my position in the tow was in the second tier; the second boat in that tier from the outside on the starboard side of the tow; I don't know how many boats there were in the tow; it was a large tow. We left Albany between three and four o'clock for New York, on the 16th day of August, 1875, and arrived down at Bull's Ferry on the morning of the 18th of August. I don't know whether the Connecticut shortened up
56 her hawsers or not. I did not see where the Stevens joined the Connecticut, but I saw her on her starboard side when we were going around the Battery. I was on the deck of my boat when we went around the Battery. I could not tell what course the Stevens and Connecticut were in going around the Battery. I did not see the Othello until after the Connecticut blew her whistles; the Connecticut and Stevens were to the east and abreast of the drilling machine when the Connecticut blew her whistles. I did not see the Othello until after the Connecticut blew her whistles. As quick as the Connecticut blew her whistles then I knew there was something wrong, and I began to look. I saw the steamship Othello then up the East River, about the centre of the—about abreast of these abutments, coming down the East River. I did not hear the Othello blow any whistles at all. I think the Connecticut was stopped at that time, and the two laid in the shape of an elbow. The Connecticut blew whistles after the first; I could not say how many. The Othello came straight into the boat Sam Morgan as she could come, striking her just forward on her stern cabin; she cut right into her.

Q. Was the Othello coming ahead when she struck the Morgan?
(Objected to.)

A. I think, to the best of my belief, she was running ahead. It stove the stern of my boat all in. When the steamship struck the Morgan it drove her right away from the outside boat behind her on the second tier, and drove the Morgan's stern right into my boat's bow, and sent my back into the bow of the boat astern of me; when the blow struck it bent my boat right up in the middle. The tide was just changing into flood. Could see off good distance. It was broad daylight. Water was smooth. No wind.

57 Mr. Beebe reads the cross-examination of Hamil Willse on behalf of Othello as follows:

Examined by Judge BEEBE:

When the Connecticut blew her whistle first, her stem was to the New York piers, I could not tell how near—she was heading across the river, right on the New York shore; I had not noticed anything until then, when I looked up and saw the Othello coming down. From this time till the collision I don't know whether the Connecticut started ahead, but I think the S. A. Stevens kept the hawsers taut.

I did not notice how many blasts were blown first.

I did not take notice between the first blasts to the second blasts, as to the time.

I know she blew the whistles, but can't tell whether they came near together or how far apart.

Q. Is it your present impression that the whistles which she blew came pretty much along in quick succession?

(Objected to.)

A. I could not tell; I have no impression about it.

Q. How near was the Othello to the tow when the Connecticut blew her last whistle?

A. I can't tell; I did not take any notice.

Q. Have you any impression on your mind?

A. No; I did not think of it.

Between the blowing of the last blast and the collision I could not tell whether it was 5 seconds or half an hour.

I could not say how long it was from the time I first saw the Othello and the collision.

Q. Can you say it was more than a minute?

A. I can't say; I should say it was more; I can't say any nearer than that.

58 My seeing of the Othello and the collision was some minutes, but cannot say how many. I could not think it out now, nor could I tell anything about time.

At the time the Connecticut stopped I did not take any notice whether anything was passing between her and New York shore.

When the Connecticut stopped going ahead, and I saw the Othello coming, I had no idea of a collision, i. e., I thought nothing about it.

The drilling machine was on the New York side of the middle of the river; I can't form any idea how near to the New York shore; at the time of the collision I don't think the tide was running very fast, can't say how fast; I am not judge enough to tell that.

At the time of the collision there were 2 or 3 tiers of tow straight across the river and the others were in sort of an elbow, and swinging slowly.

We are most generally towed by the Schuyler line.

When I see that we were to have a collision, I don't think the Othello was a length off.

The length of the hawser from the stern of Connecticut to the stern of the tier was 200 feet, I should say; the Stevens was working ahead all the time slowly, keeping the hawser up. I do not know the agent of the Schuyler line here. I hail from Utica.

Had the Connecticut kept on I think the hind boats would have got it from the Othello. There was no whistle previous to the time when the Connecticut was abreast of the drilling machine.

Q. Can you swear that the Othello had any headway by the land at the time of the collision?

A. To the best of my judgment she had, but I am not positive on that point.

Q. If the tide is running across the stem of a vessel, will it not produce the same effect as if she was going ahead?

A. I don't know; I never took notice of it.

59 Examined by Mr. VAN SANTVOORD:

I have lived in Utica for 25 or 30 years; I was born in Herkimer County.

Redirect:

I am expecting to leave town to-night for Utica.

H. WILLSE.

Subscribed and sworn to before me this 31st day of March, A. D. 1876.

JOHN A. OSBORN,
U. S. Commissioner, S. D. N. Y.

Libellant rests.

HARVEY W. TEMPLE sworn and examined on behalf of the steamship Connecticut.

Q. Mr. Temple, where do you reside?
A. City of Albany.
Q. What has been your business?
A. Steamboat and tug business.
Q. In what capacity?
A. Pilot and captain.
Q. On the North River?
A. On the Hudson River.
Q. For how many years?
A. The last 20 years.
Q. Were you the captain of the Connecticut in August, 1875?
A. Yes, sir.
Q. In command of her at the time of this collision and before that?
A. Yes, sir.
Q. When did you leave Albany with your tow?
A. I think it was about four o'clock.
Q. On what day?
A. On the 16th.
Q. Do you recollect the day of the week?
A. Monday.
Q. How many boats did you have in tow when you left Albany?
A. I think it was 37.

60 Q. (Paper shown witness.) Is that a memorandum made by you of the boats in tow?

A. No, sir; this memorandum was made by the agents, but the numbers we take.

Q. Is not your return on the back of it?
A. Yes, sir.
Q. Can you tell after looking at that how many boats you took in tow when you started from Albany?
A. Yes, sir; (after examining it) 31.
Q. Did you pick up any boats on the river?
A. Yes, sir.
Q. How many?
A. Six.
Q. (Judge BEEBE.) That makes 37?
A. Yes, sir.
Q. Did you leave any boats on the way down?
A. Yes, sir.
Q. What boats?
A. Burlingham and two canal-boats to Newburgh, two canal-boats to Poughkeepsie, and three to Newburgh.
Q. That made six you dropped at the time of passing the C. Elbow?
A. Yes, sir.
Q. How many more did you leave, if you left any more?
A. That is all the boats we left until we got to New York.
Q. Did you leave any on the North River?
A. One.
Q. (By the Court.) How many boats did you go in the East River with?
A. Went into the river with 25 boats.
Q. How many tiers?
A. Five tiers.
Q. How many boats in each tier?
A. Five.
Q. Do you recollect when you arrived off New York; when did you get down to New York, on what day?
A. The 18th.
Q. Wednesday?
A. Yes, sir.
Q. Did you stop at a near approach to the city to shorten your hawsers?
A. Stopped opposite Bull's Ferry.
Q. On what day was that?
61 A. The 18th, in the morning.
Q. Then, after shortening the hawsers, how much did you take your hawsers in at Bull's Ferry?
A. We shortened about ½; little over ½.
Q. How long were they left after they were shortened?
A. About 200 or 250 feet.
Q. Well, after shortening the hawsers off Bull's Ferry, at what time did you arrive off the Battery?
A. We arrived off the Battery about half-past 5.
Q. I mean off the Battery in the North River?
A. About a quarter past 5.
Q. Not later than that?
A. No, sir.
Q. Where were those boats bound which you took around into the East River?
A. Well, sir, they were bound from pier 2 to pier 8.
Q. North River side?
A. East River side; from pier 2 East River to pier 8 and 9, about pier 9.

Q. How was the tide when you were off the Battery, in the North River, and about coming around into the East River?

A. It was ebb tide; the last of the ebb tide in the North River.

Q. How was it in the East River?

A. It was the very first of the tide.

Q. Do you know whether there is a buoy on Diamond Reef?

A. Yes, sir.

Q. Was there at that time?

A. Yes, sir.

Q. The position of that, I suppose, will appear by the map?

A. Yes, sir.

Q. (By the Court.) The same now, is it?

A. Yes, sir.

Q. Was there a drilling machine in the East River at that time?

A. Yes, sir.

Q. Off where?

A. About off pier 7.

Q. About how far out?

A. Five or six hundred feet.

Q. Where did the Stevens join you?

62 A. Off pier two, North River.

Q. Did she come alongside the Connecticut?

A. Yes, sir; on the starboard side.

Q. On what part of her?

A. Alongside her fenders, on the starboard side.

Q. Do you recollect whether there was anything in the way under the Battery?

A. Yes, sir. There was several vessels anchored under the Battery and off pier 1, one off pier 1 and several under the Battery. There was one anchored off pier 1 North River, and there were seven anchored under the Battery.

Q. Which side of the East River?

A. Right under the Battery.

Q. Well, now, will you describe the course of the Connecticut in coming into the East River with her tow?

A. Well, the course of the Connecticut was straight down from pier 1, from 600 to 800 feet off from pier 1, until she got about half-way between Governor's Island and the Battery; then we turned and went to the southward of the buoy on the reef.

Q. On Diamond reef?

A. Yes; made a circle around the buoy on Diamond Reef.

Q. Where did you go to?

A. Turned right around the drilling machine.

Q. Well, did the Connecticut stop anywhere?

A. We stopped when we got to the drilling machine—right opposite the drilling machine. We stopped so that the Stevens could shove the Connecticut around.

Q. That is, the engine of the Connecticut was stopped?

A. Yes, sir.

Q. Well, the Stevens was working you around in?

A. Yes, sir; the hawsers.

Q. (By the Court.) When you stopped the engine, how was the tow going?

63 The tow was up the river when we stopped the engine, coming around gradually towards the west.

Q. And passed the reef?

A. Yes, sir; all of it.
Q. Some heading to New York and some heading up the river?
A. The tow was actually in the bow; the tail end had not got around.
Q. (By Mr. VAN SANTVOORD.) The tail end was westward?
A. Towards the New York docks.
Q. The Connecticut was heading in toward the New York docks?
A. Yes, sir.
Q. And the tail end of the tow formed a sort of an elbow swinging on the tide.
A. Yes, sir.
Q. Did you see the steamship?
A. Yes, sir.
Q. Where was the Connecticut when you first saw the steamship?
A. The Connecticut was then to the upper side of the drilling machine; about 100 feet past the drilling machine, heading toward New York shore, turning around.
Q. Then the drilling machine was about opposite your midships?
A. Yes, sir; our head was past.
Q. Well, when you first saw the steamship, where was she?
A. She was up by the bridge abutments.
Q. On Brooklyn shore or New York shore?
A. She was nearest to the Brooklyn shore.
Q. You mean opposite the abutments on the Brooklyn shore?
A. About there; yes.
Q. You know where those abutments are?
A. Yes, sir.
Q. Where are they in reference to the Fulton Ferry slip, the Brooklyn Ferry slip of the Fulton Ferry?
A. They are just this side of the slip.
Q. Is the slip this side?
A. The other side.
Q. What was done on the Connecticut, if anything, when you saw the steamship?
A. The pilot—when I saw the steamship I started to blow two whistles for her to go to the Brooklyn side, and as I got hold of the
64 cord, the pilot blew his two whistles, and I went back to my hawsers, and watched the ship.
Q. Was there any response to that signal?
A. No, sir.
Q. After that what was done?
A. Then there were three whistles blown.
Q. How long after?
A. I should think it was three, four, to five minutes.
Q. Where was the Othello then?
A. She was going down the river on a pretty good jog.
Q. Well, what happened after that?
A. When the three whistles were blown she had altered her course; the Othello had altered her course, and was coming for the head tier of our boats.
Q. (By the Court.) Which way?
A. To the westward; steered toward the New York shore.
Q. Is that what made you whistle?
A. Yes, sir.
Q. (By Mr. VAN SANTVOORD.) What after that?
A. She kept coming until she went into this boat, went through this boat.

Q. Which boat?
A. The Morgan.
Q. Was there more than one stoppage of the engine of the Connecticut?
A. No—stopped her; that was the last until the boat was hit.
Q. Well, how was it with the Stevens; what was she doing?
A. The Stevens had been working ahead on the Connecticut—turning the Connecticut—but as the steamer got down within a length of the Connecticut she stopped.
Q. Had the Stevens stopped before the collision?
A. Yes, sir.
Q. (By Judge BEEBE.) Kept about a length or so away, working ahead?
A. Yes, sir; she stopped before the ship hit her.
Q. How far off, according to your estimate of distance, was the steamship Othello from the Connecticut at the time of the blowing of the two whistles on the Connecticut?
65 A. I should think she was half a mile.
Q. Is it as short as half a mile from where those abutments are, down to where the Connecticut was?
A. It is a good half mile.
Q. Isn't it more than half mile?
A. I don't know but what it is. It is half a mile to three-quarters of a mile; it is a good half mile.
Q. Did you notice how much of the river was there on the Brooklyn side of the end of your tow when the steamship was up by those abutments?
A. Yes, sir.
Q. Well, how much; what room was there?
A. Well, I should think there was from a thousand to 1,200 feet; not a thing in the way; not a vessel near; nothing.
Q. What part of the river; how much; what proportion of it?
A. I should think from the tail end of our tow to Brooklyn there was all of a thousand to 1,200 feet.
Q. Was it half the river, or two-thirds, or what?
A. I should think it was over half the river.
Q. What do you call the width of the river there?
A. I should think the width of the river there was three-quarters of a mile.
Q. What time was that collision?
A. That collision happened at half past 5.
Q. How do you fix that time?
A. By my watch.
Q. (Map shown witness.) Look at this map, Captain Temple; did you assist in preparing that map?
A. Yes, sir.
Q. Does that map exhibit correctly the positions of the Connecticut at the time of the blowing of the first whistle in reference to the Othello, and also at the time of blowing the signal?
A. Yes, sir.
Q. That map shows, does it, where the buoy is on Diamond Reef?
A. Yes, sir.
Q. The positions of the tow, as stated, were given by you?
A. Yes, sir.
Q. Captain Temple, did the tow, at the time of the collision, stand as straight out as represented on this map?
A. Yes, sir; I think it did.

66 Q. Not more on an elbow?
A. No, sir.
Q. (By the Court.) How near the buoy did your boat turn?
A. 20 to 30 feet.
Q. How near the drilling machine did your boat turn?
A. About 100 feet.
Q. You went about 100 feet westward of the drilling machine and about 20 feet of the Diamond reef buoy?
A. Yes, sir; that was the direction.
Q. (By Mr. VAN SANTVOORD.) What do you mean by westward?
A. Turning around it.
Q. Do you mean the up river side toward Brooklyn?
A. Well, when we turned around this drilling machine we were not over 100 feet from it.
Q. Then you were heading toward New York?
A. Yes, sir.
Q. Then were you on the up river side of the buoy or out in the river side?
A. Yes, sir.
Q. Which were you?
A. When we turned the Diamond reef we came gradually around the drilling machine.
Q. Then when you say you were opposite, you were 100 feet westward, you mean you were 100 feet on the up river side?
A. Yes, sir.
Q. (By the Court.) When you straightened up after you passed Diamond reef, how far to port was the drilling machine?
A. The drilling machine, when we straightened up there, was probably a thousand feet away from us.
Q. When you straightened up after you passed the Diamond reef, I ask how far to port?
A. It could not have been over 300 or 400 feet to the port of us.
Q. (By Judge BEEBE.) On the left-hand side of you?
A. Yes, sir.
Q. (By Mr. VAN SANTVOORD.) Did you observe whether there was any boat alongside the steamship?
A. Yes, sir.
67 Q. What was it?
A. The Starbuck.
Q. Did you see it to know it was the Starbuck when you first saw her?
A. No, sir; I ascertained after the collision.
Q. Where was she?
A. On the starboard side of the steamship.
Q. What part of the starboard side?
A. I think about on her stern.
Q. On the quarter?
A. On the quarter; yes, sir.
Q. After the collision, did the steamship back off?
A. Yes, sir; backed quite away up the river.
Q. Then where did the Connecticut go?
A. Into the dock and landed her tow.
Q. How did she come into the dock?
A. We took what we had left with us.
Q. Did she go inside the dock?
A. She went inside the drilling machine.

Q. Were there any boats broken adrift?
A. Yes, sir.
Q. Who brought them in?
A. The Stevens and the Starbuck.
Q. (By the Court.) Which side of the drilling machine did the Othello come down on?
A. The Brooklyn side.
Q. (By Mr. VAN SANTVOORD.) How long after was that?
A. Well, I should think it was half an hour or so.

Cross-examined by Judge BEEBE:

Q. How long is the Connecticut?
A. 318 feet.
Q. How long was your hawser after you shortened?
A. I should think about 200 or 250 feet; not over 250.
Q. About 250 feet?
A. Yes, sir; about that.
Q. What was the distance between these canal boats in the tiers?
68 A. Well, when we were turning I don't think there was any distance. When we were not turning I should think there was about five or six feet.
Q. And about the length of the boats—were they all canal boats?
A. All canal boats.
Q. They were in the neighborhood of 100 feet?
A. I don't know exactly what the length of a canal boat is.
Q. You ought to know.
A. I never measured a canal boat.
Q. I don't suppose you ever measured them.
A. I should think they measured 90 to 95 feet.
Q. That would make the length of your tow 500 feet?
A. Yes.
Q. And your hawser 200 feet?
A. Yes, sir.
Q. And the Connecticut 318 feet?
A. Yes, sir.
Q. Then the broadside of your tow presented a surface of about 1,050 feet?
A. Yes, sir.
Q. That is so?
A. Yes, sir.
Q. Now, how much sooner does it make a flood in the East River than it does in the North?
A. About two hours.
Q. It runs two hours earlier in the East River than in the North River?
A. Yes, sir.
Q. There was no spring tide?
A. No, sir.
Q. It was ordinary water; an ordinary tide?
A. Yes, sir.
Q. And that made about two hours earlier in the East River than in the North?
A. Yes, sir.
Q. When you left the North River, wasn't it low-water slack?
A. No, sir; strong ebb tide.
Q. A young flood in the East?
A. Yes, sir.

Q. The effect of the ebb tide in the North River, as you rounded at Governor's Island, was to carry you still further to Governor's Island?

A. The ebb tide?

Q. The effect of the ebb tide in the North River, and the influence of the ebb tide, was to swing your tow further down the river?

A. Yes, sir.

69 Q. How far off Governor's Island were you after you turned into the East River, and after your tow straightened out?

A. Well, we were 800 or 900 feet off Governor's Island.

Q. That is the time you and your tow got straightened up in the East River?

A. No, sir.

Q. At the time that you passed Diamond Reef, was your tow straightened up?

A. Yes, sir.

Q. At the time that the Connecticut passed Diamond Reef, or the buoy off Diamond Reef, was your tow straightened behind you?

A. It was coming straight behind.

Q. It was coming straight after you?

A. No, sir; the tow was coming straight after me, out of the ebb tide.

Q. Was your tow coming straight after you?

A. Yes, sir.

Q. And were you, at that time, headed on the Brooklyn shore?

A. No, sir; we were coming around this reef.

Q. There was a time while you were coming around until you got up the river headed towards the Brooklyn shore?

A. Yes, sir.

Q. Now, at the time the tow was coming straight after you, you were headed on the Brooklyn shore?

A. Yes, sir.

Q. Was that the fact after you passed Diamond Reef?

A. We had turned before we got to Diamond Reef, we commenced turning.

Q. Now, I am talking when you got to Diamond Reef, how was your boat heading?

A. Our boat was coming around.

Q. It might have been coming around if you were heading square on to Governor's Island?

A. I understand all about it and I have told you.

Q. I want to know, at the time you passed Diamond Reef, with reference to the river, which way, at that time, was your boat heading; had you swung straight up the river; were you still along on the Brooklyn shore?

70 A. Mr. Beebe, do you mean between Diamond Reef and Governor's Island?

(By the Court.) When Diamond Reef was on your port side, where was your tow?

A. Coming right straight after the steamboat.

By Judge BEEBE:

Q. After you turned Diamond Reef, how was your boat heading; had she got head off the Brooklyn shore—was she still on the Brooklyn shore?

A. She began to head off the Brooklyn shore.

Q. Now, as you passed Diamond Reef, how far do you think that your boat was to the southward of Diamond Reef?

A. We were not over 100 feet to the southward of Diamond Reef, at any time; our wheels had just cleared the Diamond Reef.

Q. Now, what is your idea of the distance between Diamond Reef and Governor's Island?

A. I don't know; it is 1,000 feet.

Q. How wide do you think the channel on the East River is between pier 1, East River, and Governor's Island?

A. It is a good three quarters of a mile.

Q. Is that your idea?

A. Yes, sir.

Q. Are you sure that it exceeds one-third; is it as much as one-third between Staten Island Ferry and Governor's Island?

A. Well, I should think it was all of three-fourths of a mile to a mile.

Q. Is it about 1,500 feet? It is your estimate that it is three-fourths of a mile from pier 1 to Governor's Island?

A. Yes; I should think it was.

Q. And your estimate of distance that it is 1,000 feet between Diamond Reef and Governor's Island is based on the estimate that it is three-fourths of a mile from Governor's Island to pier 1?

71 A. This distance between——

Q. (Interrupting.) You put the estimate that the distance between Diamond Reef and Governor's Island is a thousand feet; I want to know whether that is based on your idea of the distance, that it is three-fourths of a mile from the New York shore to Governor's Island?

A. Yes, sir; it is based on that.

Q. Were you under way at the time you passed Diamond Reef?

A. Yes, sir.

Q. How long after passing Diamond Reef did you keep under way?

A. I should think it was five or six minutes.

Q. How much had you got to the eastward of Diamond Reef at the time you stopped your engine?

A. We were not eastward of Diamond Reef; we were to the southward of Diamond Reef.

Q. Were you ever eastward of it?

A. We were southward.

Q. Any to the eastward?

A. No, sir.

Q. Up to the time of the collision?

A. No, sir.

Q. Never was?

A. No, sir.

Q. Your judgment is that you never got to the eastward of Diamond Reef. Did you then turn to the westward of Diamond Reef to turn in towards Coenties' Reef?

A. We went to the southward of Diamond Reef.

Q. Now, tell me how you got around to the drilling machine, if you did not pass to the eastward of Diamond Reef; perhaps you can tell me.

A. Perhaps I cannot; I would like to correct myself in regard to the eastward, as I understand it; I have been locating this buoy to the southward of the reef. Not understanding the points of the compass there, I do not see, in my mind, how you could fetch me to the eastward. It looks to me so, all the time we were going to the westward; still, I may be wrong in regard to the points of the compass.

72 Q. How far did you keep up beyond Diamond Reef before you got abreast of it with your boat, after you had passed to the southward?

A. I say that when we passed Diamond Reef we commenced turning off.

Q. You passed Diamond Reef to the southward?

A. Yes, sir.

Q. You say you passed Diamond Reef to the southward on a swing. Now, I want to know——

A. (Interrupting.) I have not told you any such thing; you asked me if the tow was coming straight after me.

Q. You have said, as I understand it, you passed Diamond Reef on a swing; did you or not?

A. I said, after we passed Diamond Reef, we commenced swinging.

Q. Then you did not, up to the time you passed Diamond Reef?

A. No, sir.

Q. Now, how far to the eastward—I mean by eastward, up the East River——

A. Now I understand you.

Q. How far up the East River did you get before you commenced swinging, after you passed Diamond Reef?

A. With the steamer or the tow?

Q. With your steamer?

A. Well, that was probably 1,400 or 1,500 feet.

Q. (By the Court.) Then you did what?

A. When our tow cleared the buoy, then we commenced turning. After we passed Diamond Reef with the steamer, the Stevens was then working ahead, and we were actually turning then, but not stopped to make the steamboat turn, until we got a thousand feet above the reef, then we stopped the Connecticut; then the Stevens went ahead and commenced turning us around.

Q. Up to that time you had been heading up the East River?

A. Yes, sir.

73 Q. Then you had got the length of your tow above Diamond Reef, before you commenced to swing. Then you stopped, and the Stevens swung you?

A. Not a length.

Q. In all?

A. The steamboat.

Q. I am not talking about the steamboat. I am talking about the Connecticut.

A. 400 or 500 feet off the Connecticut.

Q. Hadn't your tow swung clear of Diamond Reef when you commenced to turn?

A. Yes, sir.

Q. Whatever the length of that tow was, you had got beyond that before you commenced to swing?

A. Yes, sir.

Q. Up to that time, there had been no swinging except the swinging of going into the East River?

A. No, sir.

Q. And then you stopped?

A. Yes, sir.

Q. And then the Stevens began to turn you in?

A. Yes, sir.

Q. Your tow at that time was far enough up so that your stern boat, in swinging, would swing clear of the east end of Governor's Island?

A. Yes, sir.

Q. You were away above Governor's Island?

A. Yes, sir.
Q. Now, when the Stevens commenced to swing you, was it a rank sheer?
A. No, sir.
Q. It was a gradual sheer?
A. Yes, sir.
Q. Now, what point on the New York shore is Diamond Reef abreast of?
A. About pier 7.
Q. Then, when you commenced to turn, when the Stevens began to turn you on to the New York shore, you were about from 1,000 to 1,500 feet up the river further than pier 7?
A. No, sir.
Q. Well, how much.
A. No, sir; we were not up to pier 7.
Q. Don't I understand you to say that Diamond Reef is abreast of pier 7, on the East River?
A. Yes, sir; Diamond Reef is not opposite pier 7.
74 Q. You went to southward of Diamond Reef and kept along up until your tow got clear of the reef, and then the Stevens began to turn you in?
A. I did not stop until we got abreast of the machine.
Q. When was that? You told me a few minutes ago that you stopped, and that the Stevens began to work you in. Did you not tell me that after you got swinging up the East River, you did not begin to swing until your tow got clear?
A. At the time we got clear of that buoy, we commenced turning.
Q. But you did not turn of your own power; the Stevens turned you?
A. We cannot turn with our own power.
Q. The Stevens turned you?
A. Yes, sir.
Q. And you stopped your machinery?
A. Yes, sir.
Q. And at that time you had got with the tug from 1,000 feet to 1,500 feet further up the river than Diamond Reef?
A. Yes, sir.
Q. Now, I ask you if that turn in was a rank sheer?
A. No, sir.
Q. That was a gradual sheer?
A. Yes, sir.
Q. Now, the Stevens continued to work you ahead until you had got headed across the river, or down the river?
A. Right across the river.
Q. Then you were steering just about straight across?
A. Yes; abreast of the machine.
Q. And got up abreast of the drilling machine?
A. Yes, sir.
Q. And how far up eastward of the drilling machine?
A. Not over 100 feet.
Q. Well, you were 100 feet further, and opposite to what pier did that bring you?
A. About pier 7.
Q. Then you headed on to the New York shore at pier 7?
A. Yes, sir.
Q. Now, opposite what point is Coenties' Reef?
A. About pier 7.

Q. Is Coenties' Reef pier 7?

A. I should think it is.

75 Which is, the north pier of Coenties slip, or the east pier of Coenties slip?

A. Well, I think the north pier.

Q. The east pier further up the East River?

A. Pier 7.

Q. You are sure it is not pier 8?

A. No, I don't think it is pier 8.

Q. You are not sure?

A. No, sir.

Q. You are not sure whether it is pier 7 or 8?

A. No, sir.

Q. At any rate were you to the eastward of Coenties slip?

A. Yes, sir.

Q. Now, how many piers eastward of Coenties slip were you at the time you got heading on to the New York shore?

A. We might have been the upper side of pier 7, and might have been the lower side of pier 8.

Q. Do you remember how many piers up the river you were beyond the upper pier of Coenties slip? You will oblige me by answering, if you can, how many piers of the easterly pier of Coenties slip you were when the Stevens stopped working you ahead?

A. We were about opposite pier 7.

Q. Where is pier 7, in reference to Coenties slip?

A. Coenties slip is pier 7.

Q. Which side? There are two sides to Coenties slip; which side of Coenties slip is pier 7?

A. It is on the upper side.

Q. Do you mean to the eastward?

A. Yes, sir.

Q. Are you sure that is not pier 8?

A. Pier 8 is next to pier 7.

Q. I didn't ask you that. I asked you if you are sure that pier 8 is not the east side of Coenties slip?

A. I won't be positive.

Q. Now, how many piers to the eastward of you, or further up the river was your boat heading, when the Stevens stopped working you ahead?

A. Pier 7.

Q. I have not asked that question; whatever that pier is on

76 the east side of Coenties slip, how many to the eastward of you were you abreast of?

A. I have told you pier 7.

By the COURT:

Q. You do not answer the question; he asks you how many piers above the upper pier of Coenties slip your boat was heading?

A. She was heading about opposite Coenties slip.

Q. How many piers above Coenties slip?

A. Not any.

By Judge BEEBE:

Q. Now you were about 100 feet further up than the drilling machine?

A. I should think we were all of that.

Q. And at the time you were heading square into the dock?

A. Yes, sir.

Q. Now from that time up to the time of the collision were you changing your head?

A. No, sir.

Q. From the time that you got to just that point, from that time on, did you work ahead any?

A. No, sir.

Q. Then you didn't work ahead?

A. No, sir.

Q. Had the Sarah A. Stevens worked you ahead when you first saw the steamer?

A. No, sir.

Q. Where was that boat? Now, as I understand it, when the Sarah A. Stevens stopped working you ahead you were abreast of the drilling-machine?

A. The drilling-machine was right near our aft gangway, about the centre of our steamer when the Stevens stopped working ahead.

Q. And about one hundred feet to the eastward?

A. Yes, sir.

Q. That was the place you were?

A. Yes, sir.

Q. Now, how much had you worked ahead or gone ahead from the time that you first saw the Othello up to the time that she stopped working you ahead?

A. We had not gone any ahead.

77 Q. Then you had not worked ahead at all?

A. There was not a bell rung on the steamer.

Q. How much did the Stevens work you ahead?

A. She did not work us ahead; in fact, it was merely a turn.

Q. Then was there any perceptible change of your position in the water as being nearer or further from the New York piers after you saw the Othello, and up to the time that the collision took place?

A. Yes; we were coming to the New York shore when we saw the Othello.

Q. Then, I asked you and I will repeat it again, how much nearer did you get to the New York shore after you saw the Othello and the time of the collision?

A. We got, no doubt, the length of our tow.

Q. Then from the time you saw the Othello up to the time that you stopped you had worked in 1,000 feet and upwards?

A. Yes, sir.

Q. Which of the two reefs is further to the eastward or up the East River?

A. Which is the furthest up?

Q. Yes, sir.

A. Coenties Slip Reef.

Q. What is the difference?

A. Three-quarters of a mile.

Q. That is supposing you take a line and draw it across from Diamond Reef to New York, that is three-quarters of a mile further westward that Coenties Reef?

A. Yes, sir

Q. Now, take a line and draw it to the eastward from Diamond Reef up the river and until you come to a range of Coenties Slip or Coenties Slip Reef, how far would it be from that line of Diamond Reef right across to Coenties slip?

A. Right across from Coenties slip?

Q. No, no; now you think Coenties Reef is about three-quarters of a mile further up the river than Diamond Reef?

A. Yes, sir.

Q. And you draw a line right across until you come abreast of Coenties Reef, how far is it from that line of Coenties Reef to Diamond Reef?

78 A. I have told you three-quarters of a mile.

Q. That is, just about as far *as* from Coenties Reef over to that line, as Coenties Reef is further up the river than Diamond Reef?

A. Those two reefs are not in a line with each other.

Q. I will have to ask you that very question. Now, suppose that that black spot there (illustrating) is Coenties Reef, and that black spot is Diamond Reef, now you take and draw an imaginary line right up that way until you get abreast of Coenties Reef; now, how far is it from Coenties Reef over to that line?

A. I should think it was 1,000 feet.

Q. Suppose that to be Diamond Reef (illustrating) and that Coenties Reef, from here up to that line would be about three-quarters of a mile?

A. Yes, sir.

Q. Now, when you saw the steamer, had the Sarah Stevens commenced to work you any at all?

A. Yes, sir.

Q. At the time that you saw steamer, how was the Connecticut heading?

A. She was gradually coming round.

Q. That is not the point; I want to know at the time you first struck the Othello, how you were heading?

A. She was heading more to the New York shore than she was to the Brooklyn shore.

Q. Was it but very little?

A. It was a good deal.

Q. How much; how much angle?

A. Considerable; I should think that we were almost across the river.

Q. That is not the point I asked you; I asked you what angle did you think you were heading on to the New York shore at the time you first met the steamer Othello?

A. We were heading on to the New York shore.

79 Q. Can you tell me at what angle?

A. Half way around.

Q. Do you mean to say you got around about eight points?

A. Yes, sir.

Q. Do you mean to say you got square on to the shore?

A. Yes, sir.

Q. Then, when you say that you were heading a little more to the New York shore than you were to the Brooklyn shore, you meant you got square around on the New York shore?

A. Not up with Diamond Reef.

Q. I don't care about Diamond Reef; I want to know if, when you say you were heading a little more on to the New York shore than on the Brooklyn shore at the time you first saw the Othello, do you mean to say you got square around on the New York shore?

A. No, sir.

Q. Then you don't mean to change it from the fact that you were heading a little more on to the New York shore than you were on to the Brooklyn shore when you saw the steamer?

A. Repeat the question.

Q. You have stated that at the time you first met the Othello, you were heading a little more on the New York shore than you were to the Brooklyn shore?

A. Yes, sir.

Q. Now, do you want to change that?

A. No, sir; I don't want to change it a bit.

Q. Now, where were you standing on the Connecticut during this time?

A. Right on the starboard side by her bits.

Q. On her main deck?

A. Yes, on her main deck.

Q. Was the S. A. Stevens between you and the Othello?

A. Yes, she was alongside of the steamer.

Q. She was on the starboard side?

A. Yes, sir.

Q. And her position was between you and the Othello?

80 A. We were ahead of the Othello; the Othello was over towards Brooklyn.

Q. I am speaking of her being on the side of your steamer?

A. The Sarah Stevens was ahead of the Othello, nearer to the New York shore than the Othello was; I was standing at the bits.

Q. Then, whereabouts did the stern of the Sarah Stevens come on the canal boat?

A. About 65 or 70 feet from the bow.

Q. And her stern?

A. Right along our wheel; right along on the aft part of our wheel.

Q. Were you standing abaft or forward of the wheel?

A. Abaft of the wheel.

Q. Well, you were abaft of the Stevens as she was lying alongside of you?

A. Yes, sir.

Q. Now, when you blew your first whistle, where were you standing, the same place?

A. I was standing on the starboard side.

Q. On the main deck?

A. Yes, on the main deck, on the upper deck.

Q. The main deck is not the upper deck?

A. We call it the main deck, because we use it as the main deck.

Q. Do you mean it is on the deck where the wheelhouse is?

A. No, sir.

Q. You were on what is called the saloon deck?

A. Yes, sir.

Q. That is where you were standing?

A. Yes, sir.

Q. Do you mean to tell me you were there blowing the whistle?

A. Yes, sir.

Q. At that time had the Sarah A. Stevens stopped working ahead?

A. No, sir.

Q. Did the Sarah A. Stevens continue to work ahead after those whistles were blowing?

A. Yes, sir.

81 Q. How far do you think the Sarah A. Stevens worked ahead after those whistles were blowing before she stopped working?

A. Four or five minutes.

Q. How far did she work you ahead during that time?

A. A very little.
Q. About how much?
A. Not over a length.
Q. A length of your boat?
A. Yes, sir.
Q. And then you stopped?
A. Yes, sir.
Q. Now, when you blew the alarm whistle and danger whistles, at that time, had she stopped working ahead?
A. Yes, sir; when the pilot blew the alarm whistles. The alarm has three whistles, according to law.
Q. At that time the Sarah A. Stevens had stopped working you ahead?
A. Yes, sir.
Q. She had stopped?
A. Yes, sir.
Q. How far, at that time, was your stern from the New York pier?
A. About six or seven hundred feet.
Q. At that time your diagram shows that your tow was straightened out?
A. As I say, the tow was on the swing.
Q. Your diagram shows that it was straightened out?
A. Yes, sir.
Q. Was it?
A. Yes, sir.
Q. Now, at that time, when you blew the danger whistles, how far was the Othello off?
A. I think the Othello was then off a quarter of a mile.
Q. Abreast of what point?
A. She was down below the abutments.
Q. Was she about abreast of the abutment when you blew the danger whistle?
A. No, sir; she was below. She was about a quarter of a mile from us; as near as we can judge she was a quarter of a mile.
A. Abreast of what point on the East River was she, if you saw her at all?
82 A. About a quarter of a mile above the Connecticut.
Q. Can you give me any idea what point on the East River she was abreast of when you blew the danger whistle?
A. No, sir.
Q. Was not she abreast of Catherine Ferry?
A. No, sir.
Q. Was she abreast of the Fulton Ferry?
A. No, sir.
Q. Was she abreast of the Wall Street Ferry?
A. Yes, sir.
Q. Then your judgment is, she was abreast of the Wall Street Ferry?
A. Yes, sir.
Q. Now, do you think it was a quarter of a mile from Wall Street Ferry to where you were?
A. Yes, sir.
Q. Then you undertake to say she was abreast of something when you blew your danger whistle?
A. Yes, sir.
Q. Now, how fast do you think she was going with the flood tide?
A. Two or three miles an hour.

Q, Was not she going six or seven miles?
A. No; I don't think she was.
Q. Well, how fast was the tide running in the East River at that time?
A. When I first saw the steamer she was going five or six miles an hour.
Q. Well, she slowed down?
A. I think she did. She must have stopped and backed, otherwise she would have cut through to the other side.
Q. Now, what is your idea of the rate of speed that the tide was running in the East River at that time?
A. I don't think it was over a quarter of a mile an hour.
Q. And about how long at this time had it been flooded?
A. Just the very first commencement of the flood.
83 Q. I thought it was that when you turned into the East River?
A. So it was; there was not over fifteen minutes' difference.
Q. Then you think it was running about a quarter of a mile?
A. Yes, sir.
Q. You say when you first saw the Othello she was off about abreast of the abutments?
A. Yes, sir.
Q. At that time did you see the Starbuck?
A. The Starbuck, I am under the impression, was just going alongside of the steamer.
Q. At the time she was abreast of the abutments?
A. Yes, sir.
Q. Do you remember whether she had taken her position?
A. I think it was about that speed.
Q. Was she alongside of the quarter at that time?
A. I think she had just got there.
Q. She had gone to the starboard side?
A. Yes, sir.
Q. But she was on the starboard side when you first saw the Othello?
A. Oh, no.
Q. You mean it?
A. I don't mean it at all. I am under the impression that the Starbuck had not got fast.
Q. Had she got to her starboard quarter?
A. Yes; when I first saw the Othello.
Q. Did you have any talk with the captain of the S. A. Stevens after the collision, or he with you?
A. I don't recollect whether I did or not.
Q. Was there any conversation either between you and him and the pilot and the captain of the S. A. Stevens?
A. I don't recollect whether we had any conversation with the captain of the Stevens or not.
Q. Do you recollect the captain of the Stevens asking you why you didn't blow your whistle when you turned?
A. No, sir; I never heard it before.
Q. You did not do it?
A. No, sir.
84 Q. I want to know whether you were the man or somebody else?
A. No, sir; I was not the man.
Q. Didn't you say to the captain of the Stevens, or somebody else, that there was no use of blowing whistles to those steamers, or words to that effect?

A. No, sir.

DANIEL BRACE, sworn and examined on behalf of the Connecticut, testifies as follows:

Q. Where did you reside in August, 1875?
A. I was on the boat.
Q. What was the name of your boat?
A. W. W. Howell.
Q. A boat running on the canal?
A. Yes, sir.
Q. Between Buffalo and New York?
A. Yes, sir.
Q. Were you master of her in August, 1875?
A. Yes, sir.
Q. Was she in this tow of the Connecticut at the time of the collision with the steamship?
A. Yes, sir.
Q. Where were you on the boat when the tow came into the East River?
A. I can't tell exactly where I was when she came into the East River; I was somewhere on deck.
Q. Do you know what the course of the Connecticut and tow was in coming into the East River?
A. Nothing more than I know they kept close to the buoy as they came around.
Q. After passing the buoy where did she come to?
A. After passing the buoy she began to round to.
Q. Toward what?
A. Shortly after passing the buoy.
Q. Around toward New York or Brooklyn?
A. Toward New York,
Q. Where was your boat in this tow?
85 A. I was fast under the Sam Morgan's stern on the starboard of the tow.
Q. Then you were the starboard side outside boat in the second tier?
A. Yes, sir.
Q. And under the stern of the Morgan?
A. Yes, sir.
Q. Did you see the steamship before the collision?
A. Yes, sir.
Q. Where was the Connecticut? How was the Connecticut standing? Where was she when you saw the steamship?
A. She was not a great ways from the drilling machine; rounding to ot far from the drilling machine.
Q. Had she stopped?
A. That I couldn't tell.
Q. Couldn't tell whether she had stopped or not?
A. No, sir.
Q. Did you hear any signals on the Connecticut?
A. Yes.
Q. What did you hear?
A. Heard her blow two whistles?
Q. Well, where was the Othello when you saw her?
A. She was not far from the abutments of the bridge.
Q. Stone abutments?
A. Yes, sir.
Q. The abutments of the Brooklyn side?

A. Yes, sir.

Q. How near was that to the time when you heard these two signals? You say you heard two whistles on the Connecticut?

A. Yes, sir.

Q. Did you see the steamship before that or after that?

A. I didn't see her until the steamer blew her whistle, and that called my attention there was something in the way, and I discovered something coming down the river.

Q. Then at the time you heard those two whistles on the Connecticut you first saw the steamship?

A. Yes, sir.

86 Q. Where was the steamship then?

A. Not far from the abutment of the bridge.

Q. Do you know where the Brooklyn slip of the Fulton Ferry is?

A. Yes, sir.

Q. Where is that with reference to the stone abutment?

A. The abutments are just the other side.

Q. Well, after you had seen the steamship didn't you observe her course?

A. Well, I watched her pretty closely.

Q. After that?

A. Yes, sir.

Q. Didn't you hear any other signal on the Connecticut?

A. I heard her blowing their whistles, three or four; I couldn't tell just how many.

Q. Didn't you hear any answer to those whistles from the steamship?

A. No, sir.

Q. Well, can you describe the course of the steamship as she was coming toward you?

A. Well, I think she was nearer the Brooklyn side than she was New York, coming directly for my boat; I supposed I was going to get the crash.

By the COURT:

Q. How was your boat heading?

A. A little kittering towards New York; swinging with the tide.

Q. Then what?

A. I watched her till I discovered, after a little while, that she had changed her course; she seemed to be coming towards New York.

Q. How near was she to you when she changed her course?

A. I could not tell exactly?

Q. Approximate as to her length or your length?

A. Perhaps she might have been five hundred or six hundred feet.

Q. About five times the length of your boat?

A. I should judge so.

Q. How far would you say about her lengths?

87 A. I couldn't tell; I have no idea how long she was.

Q. Well, you saw her struck?

A. Yes.

Q. What did she hit?

A. She hit the Sam Morgan.

Q. Whereabouts?

A. Right forward of the cabin—ten or twelve feet forward of the cabin.

Q. What effect had it?

A. She went pretty near through her, I should judge.

Q. What did you see?

A. I see her go, I should judge, two-thirds of the way through the Sam Morgan.

Q. What happened to the Morgan?

A. She sunk.

Q. Which end went down first?

A. She broke in two; I should judge she settled right where she was parted; her bow went up and her stern went up, and she settled just where she was cut.

Q. Did you notice the speed of the steamship—the Othello—as she was coming into you?

A. I couldn't tell anything particular about the speed.

Q. Was she under way at the time?

A. Yes, sir.

Q. Was the tow swinging up on the tide?

A. Swinging round very slow.

Q. Did you notice whether the Othello was as near the New York shore, or nearer the New York shore, than she was when you first saw her up by the stone abutments of the bridge?

A. I think she was nearer New York when she struck the boat than she was when I first discovered her.

Q. Did you notice how much room there was off on the Brooklyn side, off the tail of the tow?

88 A. Yes; there was, I think, room enough for her to go around there if there was water enough; I don't know whether there was water enough.

Q. What part of the river was there off on the Brooklyn side—how much?

A. I should think a good big one-third.

Q. Did you see the Starbuck?

A. Yes, sir.

Q. Where was she?

A. She was on the starboard side of the steamer.

Q. When did you first see her?

A. I didn't notice her until a few minutes before they struck.

Q. You didn't see her alongside up by Fulton Ferry?

A. No; I didn't notice her there.

Cross-examined:

Q. To the navigation of the Connecticut you paid very little attention?

A. Didn't pay much attention to it.

Q. You did observe, however, that she passed to the southward of Diamond Reef; that is, between Diamond Reef and Governor's Island?

A. I couldn't say which side she was.

Q. Which side of the tow was the buoy on which you passed?

A. I don't know; I think it was the southward.

Q. That is, you think you passed it between the buoy and New York?

A. No, sir.

Q. Then you think you passed between the buoy and Governor's Island?

A. Yes, sir.

Q. Have you any idea how near you went to Governor's Island?

A. No, sir.

Q. But you do know you kept right up the East River until the tow got beyond the buoy?

Q. Yes, sir.

Q. And got clear off the buoy and Governor's Island?

A. Yes, sir.

Q. And then the tug and the Stephens began to turn in towards New York?

A. I think the Connecticut began to turn before we got clear of the buoy.

89 Q. How much distance do you think she ran above the buoy before she began to turn in?

A. I couldn't tell.

Q. Have no idea about it?

A. No, sir.

Q. Had you seen the Othello at that time?

A. No, sir.

Q. When you did see the Othello, had your tow swung clear of Governor's Island?

A. Yes, sir.

Q. Was it off nearly abreast of the east end of Governor's Island, swinging up—I mean the stern of the tow?

A. Well, the stern; I don't know where the stern was.

Q. At any rate, what you saw was that swing up abreast of Governor's Island?

A. I think it was clear of Governor's Island.

Q. I mean eastward?

A. Yes, sir.

Q. And about abreast of it?

A. Very near, I should judge.

Q. And was swinging up with the tide-water, slow or fast?

A. Swinging slow.

Q. At the time *of* the first whistle came, you heard two whistles from he Connecticut. Did you notice at that time how the Connecticut was heading?

A. She was heading right towards New York.

Q. Had she commenced to angle?

A. Yes.

Q. She had gone straight across at that time?

A. I think she was heading over.

Q. She had commenced to swing when she blew those two whistles?

A. Yes, sir.

Q. And at the time you looked up the river and saw the Othello coming down?

A. Yes, sir.

Q. You didn't think there was going to be any collision, and then came the alarm whistle?

A. Yes.

Q. Did you know what those meant?

A. I knew those meant danger whistles.

Q. At that time how near was the Othello?

90 A. I should judge, perhaps a quarter of a mile.

Q. Can you give any point she was abreast of in the river?

A. Not far from the ferry. This side of Fulton Ferry.

Q. What time elapsed between the blowing of the two whistles and the blowing of the danger whistles?

A. I couldn't tell exactly.

Q. About what time?

A. Perhaps four or five minutes.

Q. During all that time had the boat been running in?

A. Yse, sir.
Q. On to the New York shore?
A. Yas, sir.
Q. So, when the danger signals came, she must have been heading right for shore?
A. She was pretty near it.
Q. How far do you think she run ahead—how much nearer to the New York shore—the Connecticut, I speak of?
A. I couldn't tell exactly.
Q. Give us your best judgment. How much nearer, do you think, she got to the New York shore between the time she blew her two first whistles and her whistles of danger?
A. I don't think she went more than a length or two.
Q. Do you suppose she got about the length of the tow?
A. I think not.
Q. Hadn't your tow got so that the stern had swung up inside abreast of the Diamond Reef?
A. Which do you call Diamond Reef?
Q. The one nearest Governor's Island?
A. Yes, sir; we had swung clear of it.
Q. And was not your tow just about abreast of it?
A. No; I think not.
Q. Were you inside of it?
A. I think we were this side of it.
Q. Between that and New York?
A. Yes, sir.
Q. When you had got inside of Diamond Reef?
A. Yes, sir.
91 Q. And pretty near straight across the river?
A. No, sir; we were on an elbow.
Q. How many of the tows had got swung straight across?
A. Not over two tiers.
Q. The rest were swung on an elbow at that time?
A. Yes, sir.
Q. And that was all inside of Diamond Reef?
A. I think it was.

Re-direct:

Q. What do you mean by the tows being inside of Diamond Reef?
A. I meant the New York side.
Q. (Map shown witness.) Will you look at that map? Does that exhibit the position of the Connecticut at the time those two whistles were blown?
A. I should think it did, as near as I can judge.

SHERMAN FREAR, sworn and examined on behalf of the Connecticut, testified as follows:

Q. What has been your business?
A. Steamboat pilot.
Q. On what river?
A. Hudson River.
Q. For how long?
A. About 17 years.
Q. Have you piloted steamboats on the Hudson River?
A. Yes, sir.
Q. On what boat were you employed in August, 1875?

A. The Connecticut.

Q. Were you pilot of the Connecticut on the trip when she brought down this boat Morgan?

A. I believe I was.

Q. Do you remember when you started from Albany?

A. I do.

Q. When was it?

A. I left Albany the Monday afternoon; the 16th, I think it was.

Q. Do you recollect the Connecticut's stopping to shorten her hawsers?

A. I do.

Q. Where was she when she did that?

92 A. About off Bull's Ferry, as near as I can recollect now. I don't recollect the exact spot, but I think it is near that.

Q. After that did she arrive off the Battery, in the North River?

A. Yes, sir.

Q. About what time?

A. I should judge about 5 o'clock.

Q. On what day?

A. The 18th.

Q. What day of the week?

A. Wednesday morning.

Q. Were you at the wheel in the pilot house when she arrived off the Battery in the North River?

A. I was.

Q. And did you remain there at the wheel as she went round into the East River?

A. Yes, sir.

Q. Do you remember where the Stevens came alongside the tug?

A. I think it was pier one or two.

Q. What river?

A. North River.

Q. On which side did she go?

A. The starboard side.

Q. The starboard side of what?

A. Of the Connecticut.

Q. Well, now, how was the tide?

A. It was strong ebb tide on the North River.

Q. How in the East River?

A. There was just the first of it; just beginning to set in. The brig was beginning to swing.

Q. How was the weather as to clearness?

A. It was not entirely clear; I think it was a little overcast.

Q. Was there any difficulty in seeing the buoys on the river?

A. No, sir.

Q. How was the wind?

A. There was not much of any wind; whatever wind there was, was northeast. It was very light.

Q. Were there any vessels at anchor there?

A. Where?

Q. In the entrance to the East River?

A. Under the Battery there was a vessel anchored, and quite a number near the Battery.

93 Q. That was on the New York side of the entrance to the East River?

A. Yes, sir.

Q. Do you remember how many boats you had when you went into the East River?

A. We had five lengths of boats, five abreast. I don't know whether the lengths were all filled out or not.

Q. You know the situation of the buoy on Diamond Reef?

A. Yes, sir; I do.

Q. And you knew the situation of this drilling machine?

A. Yes, sir.

Q. Where was that drilling machine?

A. The drilling machine was about off pier 7.

Q. And how far out?

A. I should think nearly 600 feet from the dock. About that.

Q. Now will you please describe the course of the Connecticut as she entered the East River, what course she made, and were she went to?

A. We went down the North River until we got pretty well down to Governor's Island, probably two-thirds of the way from Pier One to Governor's Island, and we headed up the East River. We went round the buoy on Diamond Reef.

Q. (By Judge BEEBE.) Between the buoy and Governor's Island?

A. Yes, sir, between Governor's Island and Diamond Reef. After we got clear of the buoy we straightened up the East River, just outside of the drilling machine.

Q. Did you stand across the river after you passed the buoy?

(Objected to.)

Q. I want to know after you passed the buoy there, what course you took; whether you stood across the river or how?

A. We straightened up the East River.

Q. What do you mean—toward what point?

94 A. Northeast, as near as I can get at it; the river runs northeast. Right through the centre of the river, I should take it.

Q. Then what did you do?

A. We kept that course up to Coenties Reef, about 100 or 150 feet off the drilling machine, and then we stopped and commenced to turn round.

Q. You mean you stopped what—the Connecticut's engines?

A. The steamboat, and commenced turning round—the Stevens commenced turning round, and shoved us round towards the New York shore.

Q. Well, where were you in reference to this drilling machine when you stopped, on which side of her?

A. We was to the southward of her.

Q. The drilling machine?

A. We were southward and eastward of the drilling machine when we stopped.

Q. Then the Stevens kept going ahead, shoving you round?

A. Yes, sir.

Q. How was the tow tail at that time?

A. The tow was straight up and down the river when we commenced to go round.

Q. Did you see this steamship?

A. I did.

Q. Where was the Connecticut when you first saw the steamship?

A. We was about abreast of the drilling machine when I first saw her.

Q. Had she stopped?

A. I don't recollect exactly whether we had stopped; it was about the

time we stopped, but whether we had just stopped or had not, I don t recollect; it was just about the time we stopped, whether it was before or right after it.

Q. Where was the steamship when you first saw her?

A. She was about off the abutments above Fulton Ferry.

Q. (The Court.) Who rung the bells to stop?

95 A. I think I did; I won't be certain. Sometimes the captain does, and sometimes I did. I think I did this time, but I am not positive whether I rung the bell this time to stop or not, but I think I did; I don't recollect exactly; sometimes he did, and sometimes I did.

Q. Were not signals blown on the Connecticut?

A. There was.

Q. What?

A. I blew two whistles.

Q. Well, at the time you blew those two whistles, where was the steamship?

A. About off Fulton Ferry, near the abutments; that is, when I first saw her.

Q. (The Court.) Can you tell whether your engine had been stopped then?

A. I am pretty certain the engine was stopped.

Q. Who was in the pilot-house beside you?

A. I was alone in the pilot-house.

Q. You blew the whistles from the pilot-house?

A. Yes, sir.

Q. Can you tell whether the bells had been rung before or after?

A. They had been rung before that.

Q. (Judge BEEBE.) You think so?

A. I am pretty positive the bells had been rung before I blew the whistles.

Q. You are positive you rung the bells to stop before you blew the whistles?

A. Yes, sir; I am positive the bells had been rung to stop before I blew the whistle.

Q. At that time the steamship was just below the abutments, and opposite the Fulton Ferry?

A. Yes, sir.

Q. Were there any signals blown afterwards?

A. There was.

Q. What signals?

A. I blew three whistles.

Q. Well, where was the steamship then?

A. Well, I think she was about off Wall Street Ferry; abreast of Wall Street Ferry, as near as I can recollect at the time.

Q. How far off?

96 A. Well, over a quarter of a mile; a little over a quarter of a mile, I should think.

Q. I want to know what the Connecticut was doing after you blew the two whistles; that is, the steam whistles.

A. The Connecticut's engine was lying still, and the Stevens was shoving us round into the New York shore.

Q. (The Court.) And the tow?

A. The tow behind us was coming round gradually.

Q. Coming round gradually under the influence of the tide?

A. The forward motion of the boat was carrying us.

Q. (Mr. VAN SANTVOORD.) Was there more than one stoppage of the engine on the Connecticut?

A. I don't think there was; I am not positive about that; I could not say now.

Q. You have no recollection of more than one stoppage?

A. No, sir.

Q. Were there any orders given to the Stevens to stop?

A. Not until about the time the steamship hit the canal-boat.

Q. By whom was that given?

A. I think it was the captain's orders; I think the captain hallowed to have the Stevens stop.

Q. Did you observe the course of the steamship as she was coming down?

A. Yes; came straight down the river; she was a little eastward of us; I couldn't get her course exactly, because she was out of our range where I was.

Q. Do you know whether the steamship stopped or not?

A. I do not.

Q. Do you know whether she changed her course or not?

A. I think she worked into the New York shore further than when I first saw her.

97 Q. Did you hear any hails on the steamship; any order given on the steamship?

A. I am not positive about that; I heard some talking on the ship, and it was just before the ship hit the canal boat, and I saw them heave their wheel starboard.

Q. How far off was she then?

A. About the length of the ship from the canal-boat.

Q. Could you tell what the talk was, or the hail, or order on the ship?

A. No, sir.

Q. But you heard some order given?

A. I heard some talking by an officer on the forward deck?

Q. And you saw them heave the wheel starboard?

A. The steamship's wheel heaves the contrary to ours on the steamboat. They hove their wheel aport, which was the way they wanted their ship's head to go, and we heave to the contrary.

Q. Did the steamship go that way?

A. I don't think she did.

Q. Do you know where the Starbuck was?

A. On the starboard quarter of the steamship.

Q. Where did you first see her?

A. Well, about off Fulton Ferry, or a little below where I first saw the Starbuck.

Q. Did you notice how much room there was toward the Brooklyn shore from the tail end of the tow?

A. I should think there was nearly two-thirds of the river.

Q. What was the length of the Connecticut?

A. I believe she is 318 feet.

Q. And opposite what part of the Connecticut was this drilling-machine at the time of the two whistles?

A. It was about amidships—a little abaft amidships.

Q. Was the Connecticut half way inside on the New York side of the drilling-machine?

98 A. I think she was, and more too.

Q. When the two blasts of the whistle were made?

A. I had reference to the time of the collision.

Q. Then, at the time of the collision the Connecticut was inside the drilling machine?

A. About half her length of the drilling machine.

Q. The length of the Connecticut was how much?

A. 318 feet.

Q. How long were these hawsers aft?

A. I don't think they were over 200 feet from our stern.

Q. And the length of the tow?

A. About 500 feet. The boats are about 94 or 95 feet. The distance between the lengths of the boats I say about 100 feet.

Q. And the distance from the drilling machine to the shore, how much did you call that?

A. 600 feet; I should think it was that.

Q. Well, now, if you add the 150, the 200, the 500, and 600 feet, how much does it make?

A. 1,450 feet altogether.

Q. That is, from the shore?

A. From the New York docks to the extreme tail end of the tow.

Q. That is on the supposition that your tow was standing right straight out?

A. Yes, sir.

Q. What is the width of the river there?

A. It is laid down on the map as 1,500 yards; I have reference to the South Ferry. The difference of distance between Wall Street and South Ferry is 450 yards; and across from where we was to Pier 8 to the Brooklyn shore would be 1,275 yards.

Q. (The Court.) If your tow had not been in the way, which way would the steamer have passed the drilling machine on the course she was when she struck?

A. She would have passed southward of it, I suppose.

Q. What do you say?

A. Between the drilling machine and the Brooklyn shore.

99 Q. How much would she have cleared the drilling machine, in your judgment, if she had kept right on the course she was?

A. In the course she was, she would probably have cleared the drilling machine two or three hundred feet towards Brooklyn.

Q. Now you are giving the course she was on when you first saw her?

A. Yes, sir.

Q. (Mr. VAN SANTVOORD.) This distance that you have given me from pier 8, or pier 7, to the other side, is the distance right across there?

A. Yes, sir.

Q. 1,275 yards?

A. Yes, sir.

Q. (Judge BEEBE.) Where do you take that measurement from?

A. From this chart.

Mr. VAN SANTVOORD. Well, then, the difference between the 1,275 yards, multiplied by three, and the distance which you have given from the New York shore to the tail of the tow, will give the space in the river clear up to the Brooklyn shore, which she had to come round to?

A. Yes, sir.

Q. Do you know how the water is there?

A. It is good clear across.

Q. Clear up to the shore?

A. Yes, sir; up to the docks.

Q. Have you seen ships come down that way?

A. Yes, sir.
Q. Tugs with ships come down?
A. Yes, sir; I have seen tugs tow ships down.
Q. Did you notice any change of course in the steamship as she was coming into the tow?
A. I did not; I was not in a position where I could.
Q. Do you know what boats she hit?
A. All I know is from what I hear; I didn't know at the time.
Q. Do you know whether the tow was broken up?
A. I do.
Q. What happened to other boats of the tow?
A. I didn't see that; only that they broke adrift.
Q. What became of the tug after the collision?
100 A. The Stevens shoved us down the river, and went on the inside of the drilling machine, and round the tow.
Q. Did the Stevens and Starbuck bring in the other boats?
A. They did.
Q. Did you see the Othello pass down afterwards?
A. Yes, sir.
Q. How far out did she pass down?
A. I should think she was 1,200 feet from the New York dock.
Q. How far out from the drilling machine?
A. About 600 feet.

Cross-examined:

Q. Do you know anything about the water between Diamond Reef and Governor's Island?
A. I never have measured it.
Q. Do you know what water the Othello was drawing?
A. No, sir; I do not.
Q. Did you ever know a large steamship to come down between Diamond Reef and Governor's Island?
A. I don't know that I ever saw one.
Q. Now, what is the width of the channel between Diamond Reef and Coenties Reef?
A. Well, I should think it was between 1,500 and 1,800 feet.
Q. Is it as much as that?
A. I think it was between Diamond Reef and Coenties Reef.
Q. I think you overestimated it; look on the map and see.
A. (After referring to the map.) No answer.
Q. Then if your tow was swung substantially straight across, taking the position she was in at the time when the collision took place, your tow covered more than the whole space of that line drawn up from Diamond Reef, up to the abreast of Coenties Reef, and you have no knowledge that it is prudent for a large steamer to go between Diamond Reef and Governor's Island?
A. I never saw one.
101 Q. Then the large steamers come down between Diamond Reef and Coenties Reef; that is there course, isn't it?
A. I don't know whether that is their course or not.
Q. Did you ever see a large steamer go between Coenties Reef and the piers?
A. No, sir.
Q. Did you ever see a large steamer go between Diamond Reef and Governor's Island?
A. No, sir.

Q. Then their course is between the two reefs?

A. That is the first steamer I ever saw go outside the East River.

Q. Did you ever see a large loaded ship go between Diamond Reef and Governor's Island?

A. I don't know that I ever saw a loaded ship go out.

Q. You went pretty well down the North River until you got well on to Governor's Island—down towards Governor's Island—then you made a pretty rank shear in towards the East River on your starboard, didn't you?

A. Yes, sir.

Q. Now, then, the tide at that time was running ebb in the North River?

A. Yes, sir.

Q. That swept your tow down pretty rapidly as it came down broadside to the ebb?

A. Yes, sir.

Q. And you kept on until your tow straightened up astern?

A. Yes, sir.

Q. Now, when your tow got straightened up astern, you had your boat run abreast of Diamond Reef?

A. No, I don't think it had.

Q. Did you put your wheel amidship when you got up; did you straighten on your course?

A. We went a little further to the southard.

Q. Then you headed a little more to the Brooklyn shore?

A. Yes, sir.

Q. Then how long did you keep on your port wheel; how far did you pass Diamond Reef?

A. When we got abreast of it, then I straightened.

Q. Do you mean to say you straightened when you got abreast of Diamond Reef?

A. Yes.

102 Q. Then you straightened up the East River?

A. Yes, sir.

Q. And at that time your tow was right behind you?

A. Yes, sir.

Q. And you kept on that course until the tow and everything had got clear of the east end of Governor's Island?

A. Yes, sir.

Q. Then you stopped?

A. I don't know as we stopped until we got up to the drilling machine.

Q. You kept on until you got your tow up beyond Governor's Island, and then the Stevens began to turn you in?

A. When we got up to the drilling machine.

Q. Now, I am talking about Diamond Reef; you kept on until you passed Diamond Reef, until your tow swung clear of Governor's Island; I mean the straightening of your tow was eastward of Governor's Island?

A. Yes, sir.

Q. When you got to that point you stopped your engine?

A. Yes, sir.

Q. When you got abreast of the drilling machine and your tow had cleared Governor's Island?

A. Yes, sir.

Q. Then the Stevens worked you in?

A. Yes, sir.
Q. And the Stevens worked you in on a pretty sharp shear?
A. She did all she could.
Q. And she worked you on your starboard side?
A. Yes, sir.
Q. She didn't tow you much ahead, did she; I mean much further up the river?
A. No, sir.
Q. In other words, she worked you pretty near square round, and worked a little ahead and round?
A. Yes, sir.
Q. That brought your tow ahead, and at the same time brought your tow up?
A. Yes, sir.
Q. Now, how were you heading, in reference to the New York shore, when you blew your first two whistles?
103 A. We were heading a little on the New York shore.
Q. How far at that time was your head off the New York shore?
A. I should think about 700 feet.
Q. Then you had worked in until you got within 700 feet of the New York shore when you blew your first two whistles?
A. Yes, sir.
Q. And then you were angling on to the New York shore?
A. Yes, sir.
Q. And the Stevens kept working on you until she got half-way inside the drilling machine, and then you blew the alarm?
A. Yes, sir.
Q. And from that time on you lay until the collision took place?
A. The Stevens kept shoving on us until the ship got nearly down to us.
Q. Was there any change in your position from that time until the time when the collision took place?
A. Very little.
Q. Was it perceptible?
A. The Stevens shoved on us after that; she was still working us in.
Q. How much do you think she worked you in between those danger blasts and the time when the collision took place?
A. She might have worked us 50 or 75 feet; I don't think she was 100 feet.
Q. As a matter of course, at the point where you were over to the Brooklyn shore includes all that part of the river the entrance to which is the Buttermilk Channel; in other words, from the Brooklyn side to the point where you were, they run down there to the Buttermilk Channel?
A. They can.
Q. That is the part of the river that is open to them?
A. Yes.
Q. And that is about the widest part of the river?
A. Well, it is not quite as wide as it is at the South Ferry.
104 Q. There is not much difference?
A. No, sir.

By the COURT:

Q. Can you tell how your boat headed by the compass at the time when you blew those two whistles?

A. No, sir.

Q. Now, when you straightened up, after turning the buoy, or Diamond Reef, how far to the eastward of the drilling machine was your course, as you lay?

A. I think about 150 or 200 feet.

Q. You aimed to clear it about 150 to 200 feet to the eastward?

A. Our calculation was to turn right round.

Q. Then the bow of your vessel was all the time a little on to the New York shore after you straightened up on turning Diamond Reef?

A. Yes, sir; I think it would bring us on, a little off, if anything.

Q. How far did you run after you straightened up on turning Diamond Reef, do you think, before you stopped your engines?

A. About a quarter of a mile.

Q. And on that quarter of a mile was your tow behind you?

A. Yes, sir; right behind.

Q. After the Stevens turned you, what became of your tow?

A. It kept following us around gradually; the tide was setting up; the tide kept setting the tow up, and the steamboat kept pulling the head tier round.

Q. Can you tell which way the stern boat was turned from you at the time of the collision?

A. I should think in about a southerly direction.

Q. Do you know the point of the compass?

A. No, sir.

Q. Well, if you drew a line from your boat across the stern boat of your tow, where would it strike at the time of the collision?

105 A. I should think it would strike about the South Ferry, on the Brooklyn side.

By Judge BEEBE:

Q. From the time that you straightened up on your course after you had passed the Diamond Reef on the south side, did you pass between Diamond Reef and Governor's Island?

A. Yes, sir.

Q. At the time you passed Diamond Reef, which way were you heading, on to the Brooklyn shore or off?

A. At the time we passed Diamond Reef we were heading a little on to the Brooklyn shore.

Q. At the time of passing, did you arrive between that and Governor's Island; your heading was a little on the Brooklyn shore?

A. Until we got abre'st of it.

Q. In order to change that course, you had to starboard a little?

A. Yes, sir.

Q. And you did starboard a little until you straightened up the East River, and then from that time up to the time you stopped, do you remember that you changed your wheel at all?

A. Changed it a little.

Q. Do you remember?

A. Not to alter her course.

Q. Your course was not changed from that time?

A. No, sir.

Q. Then the Stevens turned your head in?

A. Yes, sir.

Q. And as your head was turned in you blew your whistle?

A. Yes.

Redirect:

Q. Did you get any answer from the whistles by the steamer?
A. I did not either time.

Adjourned to June 9, at 11 a. m.

106 BROOKLYN, *June 9th*, 1876.

Before Hon. C. L. Benedict, judge.

SHEARMAN FREAR recalled by Judge Beebe.

Q. Do you remember anything about the captain of the Stevens or the pilot of the Stevens having asked you why you didn't blow your whistle?
A. No, sir.
Q. You say he didn't ask you any such question?
A. Not to my recollection.
Q. Do you remember making an answer that it was not worth while to blow whistles to those steamers, that they wouldn't pay any attention to them?
A. No, sir.
Q. Nothing like that?
A. No, sir.

Redirect:

Q. In coming to at that place on that morning, could you have come to them alone heading up the river, instead of going round the drilling machine?
A. No, sir.
Q. Why not?
A. On account of the tide, and our boats would swing around against the drilling machine.
Q. And then the only practical method was the one you did take to go around the machine?
A. Yes, sir.

By the COURT:

Q. Were you in the regular line, your boat?
A. Yes, sir.
Q. How often do you get here with your boats?
A. Every four days when we are running regularly.
Q. Landing always in the same place?
A. Yes, sir.
Q. How many other boats come there with the same kind of tows?
A. At that time there were seven or eight.
107 Q. All landing between those piers 2 and 8?
A. Yes, sir.

By Judge BEEBE:

Q. There are plenty of other vessels that have tows that don't land there?
A. From Albany.
Q. I am talking about the port of New York?
A. Yes, sir.
Q. That is, if a strange vessel was in the port of New York, she would be likely to know whether it was the Connecticut or any other boat?
A. Not without seeing her.

By Mr. VAN SANTVOORD:

Q. Is there any other place along there where these Albany tows are

landed; large tows are landed on the East River except between pier 2 and 9?

A. No, sir; not that I ever see.

Q. (By Judge BEEBE.) The canal boat business beside those coming from Albany; there are a great many canal boats around New York?

A. Yes, sir; New York and Jersey together.

Q. There are plenty of other canal boats?

A. Yes, that come from down the river.

Q. And come from the Raritan Canal and a great many other places?

A. Yes, sir.

JOHN B. FOUNTAIN, sworn and examined on behalf of the Connecticut, testified as follows:

Q. What was your business in August, 1875?

A. Master and pilot of the steamtug Atlas.

Q. What was her business?

A. Towing around the harbor.

Q. And towing out to Sandy Hook?

A. Yes, sir.

Q. How long have you been in that business?

A. Five years.

Q. On the morning of the 13th were you on the river in the neighborhood where the Connecticut was coming in?

A. Yes, sir.

108 Q. How did you happen to be there?

A. I was coming from Brooklyn into pier 7, East River.

Q. On the Atlas?

A. Yes, sir.

Q. Which side of the Connecticut were you at the time she was coming in?

A. I was out to the westward of her.

Q. That is on the New York side?

A. Not the New York side; well, I was by the drilling machine.

By Judge BEEBE:

Q. Where?

A. By the drilling machine, between 7 and 8.

Q. Inside the drilling machine and New York?

A. Well about half a length inside the drilling machine.

Q. (By the COURT.) What do you mean by that—towards New York?

A. Towards New York, yes, half the length of the boat.

Q. (By Judge BEEBE.) Then you were abreast of it?

A. Yes, sir.

By Mr. VAN SANTVOORD:

Q. Near the New York side?

A. Yes, sir.

Q. Which way was your boat heading?

A. Towards New York.

Q. Toward what pier?

A. Between 7 and 8.

Q. (By Judge BEEBE.) Right into Coenties slip?

A. Yes, sir; Coenties slip is 6 and 7.

By Mr. SANTVOORD:

Q. Did you see this collision between the steamship and the canal boat?

A. Yes, sir.
Q. What first attracted your attention?
A. The Connecticut blowing two whistles.
Q. How was the Connecticut standing at that time?
A. Standing towards New York.
Q. How near the drilling machine?
109 A. Well, I judge about a length, maybe not quite a length.
Q. Which side of it?
A. Above.
Q. She was near the drilling machine?
A. Yes, sir.
Q. And you heard the two whistles blow?
A. Yes, sir.
Q. Well, at that time did you notice this steamship?
A. Yes, sir.
Q. Where was the steamship at the time those whistles were blown?
A. She was about as near to Fulton Ferry as I could see; she was between Harbeck stores and Fulton Ferry on the Brooklyn shore; she might have been half a length of the ship this way or that way; I couldn't tell exactly from the position I was in.
Q. Did you hear any response to that signal?
A. No, sir.
Q. After that did you hear any other signal from either of those boats?
A. Yes, sir.
Q. What boat?
A. The Connecticut.
Q. What was that?
A. Three whistles.
Q. Was there any response to that?
A. No, sir.
Q. Did you notice how the Connecticut was heading at the time of those three signals?
A. She was heading towards New York, lying still.
Q. Was she lying still between the two whistles and the alarm whistle?
A. Yes, sir; at least her engine was not working.
Q. Well, did you notice the course of the steamship as she came down?
A. She was heading down the channel.
Q. Well, how did she come and what did she do?
A. She kept heading down until—well, just above she hit, then she was heading towards about pier 2, East River.
Q. You saw her hit?
A. Yes, sir.
Q. What did she hit?
A. The canal boat.
110 Q. Well, where was the steamship at the time of the alarm whistle; the three whistles from the Connecticut?
A. She was about abreast of the Harbeck stores, I think, as near as I can judge.
Q. (By Judge BEEBE:) On the Brooklyn side?
A. Yes, sir.
Q. Where are those Harbeck stores?
A. I think they are about a quarter of a mile below Fulton Ferry; maybe a little below that; I never seen it measured.

Q. How with reference to Wall Street Ferry on the Brooklyn side?
A. It is between Fulton Ferry and Wall Street Ferry.
Q. Then it was above Wall Street Ferry at the time of the three whistles?
A. Yes, sir.
Q. Was there anything in the way on the Brooklyn side of the river?
A. No, sir.
Q. Entirely clear?
A. Yes, sir.
Q. How as to there being room enough for the Othello to have passed off on the Brooklyn side of the tow?
A. I think there was plenty of room.
Q. You have towed large vessels up and down there?
A. Yes, sir.
Q. And do you know from your experience in towing vessels that there was room enough and water to pass off on the Brooklyn side?
(Objected to.)

By the COURT:

Q. What is the water on the Brooklyn side?
A. Some places there are 30 and 40 feet water, and some places there is not so much.
Q. Do you know how the water runs there?
A. The channel is on the Brooklyn shore, until you get down to Wall Street Ferry, for large vessels.

By Mr. VAN SANTVOORD:

Q. How was the Connecticut heading at the time the Othello hit this tow?
111 A. Heading in for about pier 7; I was not exactly watching the Connecticut; I was watching the steamer hitting the canal-boat.
Q. What was the state of the tide?
A. It was slack water, as near as I could get to it; it was flood tide underneath but slack on top; in the middle of the river, along in towards the dock, there was a little flood tide.
Q. Did you notice whether the tow was swinging up?
A. They were swinging, and that is all; they were standing dead.
Q. Very slow?
A. Yes, sir; you could hardly discern it.

Cross-examined:

Q. How came you to stop there?
A. My business attracted me.
Q. Then your business was to go to help the tow?
A. No, sir.
Q. Why didn't you keep on to the tug?
A. Because my business didn't call me.
Q. Then you stood abreast of this drilling-machine to watch these boats?
A. Yes, sir.
Q. Stopped your boat right there and staid there?
A. Yes, sir.
Q. Without any vessels?
A. Yes, sir.
Q. And that boat was coming nearly around abreast of you with her tow, and you lay abreast of the drilling-machine to the eastward?

A. To the westward.
Q. Were you below it?
A. Yes, sir.
Q. Further down the river?
A. Yes, sir.
Q. But a little abreast of her?
A. Yes, sir.
Q. Had started from Brooklyn to go over to pier 7, and stopped below the drilling-machine; below the drilling-machine, had you any motive in stopping there?
A. No, sir.
Q. What?
A. I wanted to see where the tow was going to land.
112 Q. Did you expect to help the tow?
A. No, sir.
Q. Your only purpose was to see where that tow was going to land?
A. Yes, sir.
Q. When had you first observed the Connecticut?
A. On my going from Brooklyn.
Q. When?
A. Between 5 and 6 o'clock in the morning.
Q. I mean what part of the river?
A. Going up the East River.
Q. What part of the East River were you when you first noticed the Connecticut?
A. I was below the drilling-machine.
Q. And then at that time her tow was how, in reference to the Connecticut, when you first noticed her?
A. The tow way laying in the river.
Q. Her tow was nearly down the river?
A. No, sir.
Q. When you crossed the river, did you pass above or below the tow?
A. Below the tow.
Q. Then did you go pretty near on a line across? Where did you start from in Brooklyn?
A. Foot of Degraw street.
Q. Where is Degraw street with reference to the South Ferry?
A. It is near Hamilton Ferry.
Q. You crossed right across there?
A. Yes, sir.
Q. And you came as straight across as you could for pier 7?
A. Not straight across.
Q. Which way did you come?
A. I did not mark it down; I came to New York.
Q. Was there any reason why you should vary your course?
A. Looked for a job.
Q. Did that make you vary your course?
A. Yes.
Q. Did you see any job which made you vary your course?
A. No, sir; I did not.
Q. Then there was no job which called you to vary your course?
A. No.
Q. If you varied your course, how did you vary it?
A. Towards New York.
Q. Was there anything that made you vary it from east to west?
A. Nothing.

113 Q. Then you kept right across from the Brooklyn side to the New York side?
A. Yes, sir.
Q. Do you tell me you were looking for a job when you came across?
A. I just told you I was looking for a job.
Q. When you passed on that course you passed to the westward of this tow?
A. I did.
Q. Now, how far were you to the westward of the drilling-machine at the time you first noticed the Connecticut?
A. About 150 feet.
Q. Then, before you noticed the Connecticut or her tow at all you were about 150 feet westward of the drilling-machine, and abreast of it?
A. I was 150 feet of the drilling-machine.
Q. And abreast of it?
A. Yes, sir.
(By the COURT.) When?
A. At the time of the collision.

By Judge BEEBE:

Q. I am talking when you first noticed the Connecticut?
A. Yes, sir.
Q. When did you first notice the Connecticut?
A. When the two whistles blew.
Q. Was she then abreast of the drilling-machine to the westward?
A. Yes, sir.
Q. And about how did she lay in reference to it?
A. North side.
Q. That is, heading right on to the New York shore?
A. Yes, sir.
Q. A little, if anything, down?
A. Yes, sir.
Q. That was the way she was heading when those two whistles were blown?
A. Yes; she was heading right straight across.
Q. Was she heading on to the New York shore?
A. She was heading towards the New York shore.
Q. And nearly square on to the shore?
A. If I had been on the boat I could tell.
114 Q. I am talking about what you have testified to yourself; I want to know when at that time, when you first observed the blowing of the whistles, immediately you looked at her, and that was the first you had seen of her?
A. Yes; the first I took any notice of her.
Q. Then at that time she was heading, as square as might be, on to the New York shore; is that so?
A. I said she was heading towards New York.
Q. Was she heading nearly square on to the shore; and when you say north and south, was that square on to the New York shore?
A. That is supposed to be.
Q. That is so?
A. I don't know exactly whether it is so.
Q. Do you know the points of the compass?
A. I do.
Q. At that time was her tow right after her?
A. No, sir.

Q. Was her tow heading up and down the river?
A. No, sir.
Q. Where was it heading?
A. About a point on her stern.
Q. All her tow was just about a point further to the westward than she was?
A. Her tow was on a little point.
Q. About a point?
A. As near as I could come to it.
Q. Then at that time you had crossed the river, got abreast of the drilling-machine; there you stopped; there you noticed the Connecticut on hearing the two blasts of the whistle; is that so?
A. I noticed the boat Connecticut when she blew her whistles.
Q. Now, from that time until the collision, did she change her position?
A. No, sir.
Q. Didn't at all?
A. No, sir.
Q. Lay right there just right abreast of that machine?
A. As near as I could judge.
Q. You were looking right at her?
115 A. Not exactly at her.
Q. If she had moved you must have seen her?
A. No, sir.
Q. If she had moved ahead she would have moved her tow?
A. The tow was moving.
Q. Which way?
A. Towards her all that time.
Q. What brought the tow towards her?
A. The tug that was shoving.
Q. Was she working the Connecticut in?
A. Yes.
Q. Had she worked in ten feet?
A. I don't know.
Q. Twenty feet?
A. I don't know.
Q. Can you swear she worked her in ten feet?
A. No, sir.
Q. Can you swear she worked her in a foot?
A. I can't say.
Q. Can you swear she worked her in at all?
A. (No answer.)
Q. So near as you could see had she changed her course nearer in shore than she was at the time you first saw her?
A. (No answer.)
Q. So far as you knew or saw, can you swear that the Connecticut, from the time she blew her whistle, worked in towards the New York shore, between that time and the collision, one foot?
A. She might and she might not.
Q. Can you swear that she did?
A. No, sir.
Q. Can you swear that she changed her head in regard to the New York shore?
A. Yes sir.
Q. Which way?
A. Towards New York.

Q. Which way?
A. To the westward.
Q. Then she swung more down; was that it?
A. More down.
Q. How much?
A. I can't tell.
Q. How do you think she was heading at the time of the collision?
A. She was heading towards New York.
Q. Towards what pier?
A. Pier 8, between 7 and 8.

116 Q. How was she heading when she blew two whistles?
A. Towards New York, towards pier 8.

Q. Then she was heading towards the same pier when she blew two whistles, and was heading towards the same pier when the collision took place; is that so?
A. (No answer.)
Q. My question is that she was heading towards the same pier when she blew the two whistles, that she was when the collision took place?
A. I didn't see any such thing.
Q. Did you just say that when she blew the two whistles she was heading towards pier 8, and when the collision took place she was heading towards pier 8?
A. Yes, sir.
Q. That is true?
A. Yes, sir.
Q. How far, according to your notion, is it that the drilling machine, or Coenties Reef, is away from the ends of the piers?
A. About 300 or 400 feet.
Q. What is the distance on a line; I don't mean diagonal; what is the distance on a line from Diamond Reef on a line up to and opposite the drilling machine? What is the distance from that directly up the river and the drilling machine?
A. As near as I can come to it, about half a mile.
Q. You understand my question?
A. You ask me how far Diamond Reef is from the drilling machine.
Q. No; I did not. Take that point (illustrating); that is the drilling machine?
A. Yes, sir.
Q. There is Diamond Reef (illustrating)?
A. Yes, sir.
Q. Now, you draw a line right up the river; how far is it from there up to that line, in your judgment?
A. To that line?
Q. Yes.
A. Three or four hundred feet; that is not from the Diamond Reef to the drilling machine.

117 Q. I have not asked you any other question than that. Now, when were you first spoken to about this collision?
A. I don't know exactly when it was.
Q. About what time?
A. A couple or three days afterwards, I think.
Q. By whom?
A. By the agent of the insurance company.
Q. Who?
A. I don't know his name.

Q. Suppose that is Diamond Reef (illustrating); what is your idea of the distance from there (illustrating) to Governor's Island?

A. A little over a quarter of a mile.

Q. What is your idea as to the distance between Diamond Reef and the New York pier?

A. A little over half a mile. From here (illustrating)?

Q. Yes.

A. As near as I could get to it, it is half a mile.

Q. I want to know, in your judgment, how far that line would carry you to the southward of Coenties Reef?

A. What do you mean; the line?

(Map shown witness.)

Q. I mean that line (illustrating.)

A. That line from Diamond Reef would fetch you right on to Coenties Reef.

Q. I am talking about your line direct up the river. Is that your idea—it would bring it just about on to Coenties Reef?

A. No, sir.

Q. How much would it bring to the southward of Coenties Reef?

A. It would not fetch it to the southward; it would fetch it to the eastward.

Q. Now, how near to the Brooklyn shore was the steamer when you first saw her?

A. She was over—close to the Fulton Ferry.

118 Q. How near to the Brooklyn shore?

A. She might have been a length, and perhaps not as much as that.

Q. Do you think she was any more than a length off?

A. About a length off; that is, the length of the ship.

Q. That is what I am talking about. Now, give me an estimate of the length you make the steamer?

A. I should think she was 300 feet, may be more or less.

Q. Is it about 300 feet?

A. Yes, sir.

Q. Then you think she was about 300 feet off Fulton Ferry, on the Brooklyn side?

A. Yes, sir.

Q. How was she heading?

A. Towards Governor's Island.

Q. Did you notice how that would carry her; north to Coenties Reef?

A. It would carry her to the southward.

Q. How much?

A. A quarter of a mile.

Q. How would it carry her with reference to the Diamond Reef?

A. To the southward.

Q. Could she have gone out to the southward of Diamond Reef?

A. No, sir.

Q. Then she would have had to change her course if she had gone between the two reefs?

A. Yes, sir.

Q. Your idea is that she would still have gone to the southward of Diamond Reef. Now, did you know that particularity at a distance of how far was it from where you were up to Fulton Ferry?

A. A little over half a mile.

Q. And you can undertake to say what particular point she was heading?

A. I could come pretty near it.

Q. How much was she outside the line you were lying at? How far would her course have carried her from you if you had kept right on?

A. She couldn't have kept that course.

119 Q. Suppose she had?

A. She couldn't have kept it.

Q. Suppose she had?

A. Then she would have hit the dock.

Q. Where?

A. On the Brooklyn shore when I first noticed her.

Q. She would have gone into the Brooklyn docks at about what points?

A. I don't know.

Q. About what points?

A. I can't tell you what points. No point at all. I couldn't tell exactly.

Q. Would it have been above or below South Ferry?

A. I should think it would have been above South Ferry.

Q. Wall Street Ferry?

A. Yes, sir.

Q. Then you think she would have had struck about Wall Street Ferry on the Brooklyn side?

A. I don't think anything about it.

Q. You say she would have gone into the Brooklyn docks?

A. I don't know where she would have gone. I am not supposed to know.

Q. You say, in your judgment, she would have gone into the *the* Brooklyn docks?

A. When I first noticed the steamer.

Q. Now, as she was heading at the time you first noticed her what part of Brooklyn docks would she have gone into?

A. What is it you mean?

Q. I mean just as I say. I speak good plain Saxon English.

A. I can't understand it half the time.

Q. I want to know if you state that as she was headed when you first saw her that if she continued that course she would have gone into the Brooklyn docks; is that true?

The COURT. The steamer Othello?

120 A. (No answer.)

The COURT. Repeat the question.

Q. Now, I want to know, you have said that at the time you first saw her the way she was heading she would have gone into the Brooklyn docks?

A. I say when I first saw her; she could have changed her course after I first saw her. We see two different things.

Q. Now as she was heading when you first saw her she would have gone into the Brooklyn docks; now, is that true?

A. Yes, sir.

Q. At what point would she have struck the Brooklyn docks?

A. I don't know.

Q. Can you form any idea?

A. I don't know how far she would have went.

Q. Can you form any idea?

A. I was not on board the vessel.

Q. Can you form any idea?
A. No, I can't form any idea.
Q. Can you say she would have struck the docks at all?
A. No, I can't say.
Q. Now you say she did change her course?
A. Why, she must.
Q. Did you see her change her course?
A. Yes, sir.
Q. Where was she when she commenced to change that course, abreast of what point?
A. I can't tell exactly. She was between Fulton Ferry and South Ferry when she changed her course.
Q. Off the Brooklyn shore?
A. Yes, sir.
Q. How near the Brooklyn shore?
A. It might have been 200 or 300 feet or 400 feet.
Q. She was between 200 and 300 feet from the Brooklyn shore when she changed her course?
A. Between 300 and 500 feet.
Q. At what point on the New York side was she abreast at that time?
A. I can't tell. Between Fulton Ferry and South Ferry.
121 Q. Can you come any nearer than that?
A. No, sir.
Q. Was she nearest Fulton Ferry or South Ferry?
A. Nearest Fulton Ferry.
Q. Was she to the westward of Wall street when she changed her course?
A. Yes, sir.
Q. What pier is Wall Street Ferry on the New York side?
A. Pier 14, between 14 and 15; 15 and 16 I should say.
Q. Abreast of what pier did the collision take place?
A. About abreast of pier 8 or 9 the collision took place.
Q. What is the distance between pier 9 and the mouth of Wall Street Ferry slip on the New York side?
A. It is a quarter of a mile, I should think.
Q. Is it 1,000 feet?
A. I don't know.
Q. What was the width of the river abreast of Wall Street Ferry slip and the Brooklyn shore, a line right across there?
A. I don't know exactly the distance. I never see it measured.
Q. About what is your judgment?
A. About half a mile.
Q. And you think at that time when she changed her course she was from 200 to 500 feet from the Brooklyn shore, headed down the river along the Brooklyn docks; if she had not changed it she would have gone into the Brooklyn docks?
A. When I first saw her.
Q. And that was the time she began to change?
A. When I first saw her.
Q. No, no; she began to change when she got to a point between Fulton Ferry and South Ferry, as nearly as you can say abreast of Wall Street Ferry, on the New York side; and at that time she was from 200 to 500 feet off the Brooklyn shore?
122 A. I say when I first saw the steamer she was abreast the Fulton Ferry.
Q. I am talking now about the time when she changed her course

that is what I am talking about. Now, you have already stated when she commenced to change her course, as near as you could judge, she was abreast of Wall Street Ferry, on the New York side, and that she was then from 200 to 500 feet off the Brooklyn docks?

A. I didn't state she was abreast of Wall Street Ferry on the New York side.

Q. Then what point on the New York side was she abreast of when she commenced to change?

A. I can't tell exactly.

Q. Give us your best recollection; you have given it to us with wonderful accuracy ——

By the COURT:

Q. (Interrupting.) Where was she when she changed her course?

A. She was between Fulton Ferry and Wall Street Ferry.

Q. On what side of the river?

A. On the Brooklyn side.

Q. How far from the Brooklyn pier?

A. I can't tell exactly.

Q. About?

A. About 300 or 400 feet.

By Judge BEEBE:

Q. About what point was she abreast of on the New York side?

A. I don't know exactly; she was between Fulton Ferry and South Ferry.

Q. Whether she was above or below Wall Street Ferry you can't say?

A. No, sir; I can't say.

Q. But she was well on the Brooklyn shore?

A. She was on the Brooklyn shore.

Q. Then she commenced to change; is that so?

123 Q. (By the COURT.) (Interrupting.) Where did she commence to change?

A. Between Fulton Ferry and Wall Street Ferry.

Q. Between what points was the steamer when she commenced to change her course?

A. She was between Fulton Ferry and Wall Street Ferry.

Q. And how near to Wall Street Ferry?

A. I can't say exactly how near Wall Street Ferry.

Q. What slip was she nearest to?

A. That I couldn't say.

Q. Was it below Fulton Ferry?

A. She was below Fulton Ferry.

Q. Can you say she was not below Wall Street Ferry?

A. I cannot.

Q. Then can you form any idea how near she was to Wall Street Ferry?

A. No, sir.

Q. You didn't dream at that time there was to be any collision?

A. Yes, sir.

Q. At that very time?

A. Yes, sir.

Q. Before you saw her change?

A. Yes, sir.

Q. You thought there would be a collision?

A. Yes, sir.

Q. How far was she to the southward and eastward from where the tow was lying?

A. She was not to the southward, she was to the eastward of the tow.

Q. How near was this tow to the New York shore?

A. If I understand the thing right, the East River runs east and west, and a vessel that is lying in the middle of the river or close to Brooklyn can't be to the southward.

Q. I understood you to say if she kept on her course she would have struck the Brooklyn docks?

A. Yes, when I first saw her.

Q. Would that have carried her to the southward of the tow?

124 Q. (By the COURT.) (Interrupting.) Where was she when you first saw her?

A. As near to the Fulton Ferry as I could judge.

Q. And headed how?

A. A kind of on an angle down the river.

Q. If she kept on that course where would she have brought up?

A. Up on the Brooklyn shore.

Q. Where?

A. On the Brooklyn shore somewhere.

Q. How far did she run after that before she changed?

A. I did not notice.

Redirect:

Q. You know where the buoy is on the Diamond Reef?

A. Yes, sir.

Q. In coming from Brooklyn over to New York, eastward, which side of that buoy did you pass?

A. To the eastward.

Q. Did you notice where the Connecticut's tow was then?

A. The Connecticut's tow was a little down the river, as near as I could come to it; she was headed towards New York and the tow was eastward to me.

Q. Then you passed, in coming from the Brooklyn side to the New York side, between the tail end of the tow of the Connecticut and the buoy?

(Objected to.)

Q. Now, how far to the eastward of that buoy did you pass?

A. May be 500 feet to the eastward of that buoy.

Q. And then what point of the New York shore did you first touch?

A. Pier 6.

Q. Was there room enough between the tail end there of that tow and this buoy for the ship to go to sea?

A. Yes, sir.

Q. In the regular channel?

A. Yes, sir

125 By the COURT:

Q. What is the regular ship channel down there?

A. The Brooklyn shore until you come down to about abreast of Wall Street Ferry, and then you come out towards Jersey City.

Q. Below the reef?

A. To the southward of Coenties Reef.

Q. And to the northward of Diamond Reef?

A. Yes, sir.

By Mr. VAN SANTVOORD:

Did you keep along the Brooklyn shore?

A. Yes, sir; in the ship channel.
Q. And then they changed towards Jersey City?
A. Yes, sir.
Q. You have brought in and taken out large ships with the tug?
A. Yes, sir.
Q. What is your estimate of the distance in a direct line from the buoy on Diamond Reef to this place where this drilling machine was?
A. About half a mile.
Q. That is going in a direct line from one to another?
A. Yes, sir.

Recross:

Q. Did you ever know a steamer to go between Diamond Reef and Governor's Island.
A. Yes, sir.
Q. What? Tell me one.
A. I never took notice.
Q. Can you tell me one?
A. I have seen dozens of them go that way.
Q. Between Diamond Reef and Governor's Island?
A. Yes, sir.
Q. Drawing how much water?
A. 16 feet.
Q. 22?
A. 16 feet.
Q. 22 have you seen?
A. No, sir.
Q. 20?
I don't know.
Q. How did you know what steamers drew, that you saw go through?
A. Because I had them myself.
126 Q. What is the name?
A. I couldn't tell you.
Q. Can you tell me any ship that you towed between Diamond Reef and Governor's Island that drew 16 feet?
A. Yes, sir.
Q. Give me one.
A. I can't tell you the name.

Redirect:

Q. Do you know the time of that collision?
A. Between five and half past five, as near as I could come to it.

GEORGE M. TOURNADE, sworn and examined on behalf of the Connecticut, testifies as follows:

Q. What was your business in August, 1875?
A. Pilot of the S. A. Stevens.
Q. What was her employment?
A. Towing around the harbor and assisting the Albany tows.
Q. Had you been engaged as pilot on tugs in towing around the harbor?
A. Yes, sir.
Q. At that time for how long?
A. I have been pilot around the harbor for about 15 or 16 years.
Q. Have you towed vessels to and from the sea?
A. Yes, sir.
Q. Down to Sandy Hook?

A. Yes, sir.
Q. What class of vessels?
A. Most all classes.
Q. Steamers?
A. No, sir; I never towed any steamers.
Q. What were you on the Stevens in August, 1875?
A. Pilot.
Q. Did you join the Connecticut as a helper before she came round into the East River on the 18th August last?
A. Yes, sir.
Q. Where did you join her?
A. Somewhere along between pier 3 and 4, I think, North River, just above pier 1.
Q. Did you go alongside of her there?
127 A. Yes, sir.
Q. On which side?
A. On the starboard side.
Q. Did you accompany her round into the East River?
A. Yes, sir.
Q. About what time was the Connecticut with her tow off the Battery, in the North River?
A. I can't tell exactly the time.
Q. How was the tide in the North River?
A. Ebb tide.
Q. And how in the East River?
A. Just making flood. About slack water when we began to turn round.
Q. Were you at the wheel of the Stevens when she went round into the East River?
A. Yes, sir.
Q. And you observed her course, did you?
A. Yes, sir.
Q. Will you please state it—the course in entering the river, and so on up?
A. We came down to the Battery and found a lot of schooners round the Battery, and went round the schooners, Diamond Reef, and so on round this drilling machine.
Q. On which side of the buoy on Diamond Reef did you go?
A. Went to the southward.
Q. Close to the buoy?
A. I can't tell exactly how far.
Q. What was the course down to the buoy before you reached it, in the entrance to the East River?
A. We came about straight in, outside them schooners.
Q. (By Judge BEEBE.) Out of the North River?
A. Yes, sir; came below the schooners, and came straight in for the buoy.
Q. Did you come into the East River in a line with the north side of Governor's Island?
A. Pretty near on a line with it.
Q. (By Judge BEEBE.) Pretty near on a line with the shore on Governor's Island?
A. Yes, sir.
128 Q. Well, after the steamboat passed the buoy on Diamond Reef what was the course made by the Connecticut?
A. We steered right up the East River to the drill.

Q. Was she inclined either to the New York or Brooklyn shore in going up to the drill?

A. We headed right up for the buoy, straight up for this drill.

Q. How near to the drill did that bring you?

A. I should think we were somewhere near 100 or 150 feet from the drill when we got in that neighborhood.

Q. What was done on the Connecticut, if anything, when you got to that drill?

A. She stopped when we got to the drill, and we went ahead to shove her round.

Q. How was the tow tail at that time?

A. Straight down behind us, down the river.

Q. Was any signal given on the Connecticut?

A. Blew two whistles.

Q. When was that?

A. Just after she stopped to turn round.

Q. Did you see this steamship?

A. Yes.

Q. Where was the Connecticut when you first saw the steamship?

A. About abreast of the drill, right alongside of it.

Q. Had the Connecticut stopped at that time?

A. Yes, sir.

Q. How was the Connecticut heading at that time?

A. Somewhere about Wall street, down along there.

Q. Pier 14 probably, when you blew?

A. Yes, sir; we were shoving around gradually.

Q. And where was the steamship when you first saw her?

129 A. The steamship was in the neighborhood of Fulton Ferry, near the bridge abutments; about abreast of them.

Q. How was she heading?

A. I should judge she were heading about straight down there.

By Judge BEEBE:

Q. By the shore?

A. About straight down the river.

Q. I say, by the shore?

A. You couldn't tell much by the shore.

Q. (By the COURT.) Which side of the drill, or Diamond Reef?

A. We were heading outside of the drilling machine.

Q. Was there any response from the steamship?

A. No, sir.

Q. Was there another signal given?

A. Yes, sir.

Q. What was that?

A. Three whistles.

Q. From the Connecticut?

A. Yes, sir.

Q. What was the meaning of that?

A. That is an alarm whistle.

Q. At the time that alarm whistle was blown did you observe where the steamship was?

A. Yes, sir.

Q. Where was she?

A. I should judge she was about half way distant between us and Fulton Ferry; about half way down to us.

Q. Well, did you notice what course she was going on?

A. I don't know exactly. Without knowing which way she was heading I could not tell her course.

Q. After that did you see the collision?

A. Yes, sir.

Q. Where did she strike?

A. Struck this canal boat on the starboard side of the tow.

Q. (By Judge BEEBE.) The hawser tier?

A. Yes, sir.

130 Q. Did you notice how fast the steamship was moving?

A. Well, it was going through the water quite considerably; I couldn't tell exactly how fast.

Q. What is your best judgment?

A. I don't know as I could tell much about that; she was going through the water pretty lively when she hit.

Q. What was the Connecticut and the tow doing between the time of the first signals by two blasts of the whistle and the collision?

A. The Connecticut was laying still waiting for us to shove her down inside this drill; there was hardly tide enough to swing, and she had to stop until we shoved her round.

Q. The Connecticut's engine was stopped; lying still; you were turning the Connecticut in, and the tow was swinging up slowly?

A. Yes, sir.

Q. Do you know what the time of that collision was?

A. Just half past 5 o'clock when she struck the canal-boat.

Q. How did you fix that?

A. I took the time by my watch.

Q. Do you know where that drilling machine was?

A. Yes, sir.

Q. Where was it?

A. It was abreast of pier 7.

Q. And you knew where the buoy was?

A. Which buoy?

Q. The buoy or Diamond Reef.

A. Yes, sir.

Q. What do you call the distance on a direct line between the drilling machine and the buoy on the Diamond Reef?

A. Well, I should think it was in the neighborhood of half a mile.

Q. Do you know where the regular ship-channel is down there?

A. Yes, sir.

Q. Where does it pass?

A. Well, it generally goes down along Brooklyn and hauls out

131 to the northward of Diamond Reef buoy; you couldn't go anywhere between the drilling machine and off the Battery; you have to go down on the Diamond Reef buoy.

Q. You have been down there with large ships?

A. Yes, sir.

Q. What is the usual course in going down there with large ships?

A. A compass course.

Q. No, not by the compass, but in reference to the course down the river?

A. They generally go down, as I told you, along Brooklyn, and haul out.

Q. Between the buoy and the drilling machine?

A. Yes.

Q. How much room was there between the outer end of that tow as as she was standing still there and the buoy?

A. The outer end of our tow was above that buoy; I can't tell exactly how far.

Q. Was there room enough for a ship to pass between the out end of that tow and northward of the buoy?

A. Yes, sir.

Q. How many times did the Connecticut stop, or did she stop more than once?

A. She only stopped once.

Q. Did the Stevens stop at the same time she stopped?

A. No, sir.

Q. What did the Stevens do when she stopped?

A. We were showing her round all the time, heading down the river.

Q. Did the Stevens stop before the collision?

A. Yes, sir.

Q. When?

A. We stopped when they blew three whistles.

Q. (By the COURT.) How far away was the steamer then?

A. About half way between us and Fulton Ferry, as near as I could judge.

Q. How was the Connecticut heading at the time of the collision?

132 A. The Connecticut was heading right between pier 8 and 9, square head on to the dock.

Q. How did the tow tail off at that time?

A. The tow hung right off the port quarter of the Connecticut, and tailed off; it had a kink in it; the tail kind of hung down the river.

Q. Will you look at that map [map shown witness; how near does that represent the position of the Connecticut at the time of the second signal and at the time of the third?

A. This is about the position of the first whistle, and the other was about the same as when the collision occurred; the position on the map is about as near as I can get it.

Q. Did you observe whether there was any stopping of the steamship before she came into the boat?

A. I couldn't tell.

Q. Was she moving in the water?

A. She was moving through the water at the time.

Q. Did you see her at the time she hit the boat?

A. Yes, sir.

Q. Well, what did she strike or how?

A. She struck this boat head on, just forward of the cabin.

Q. Cut into it?

A. Yes, sir.

Q. Did they scatter the tow, break up the tow?

A. Knocked some of them off.

Q. What did the steamship do after that?

A. Backed out.

Q. And where did the Connecticut go?

A. We shoved her ahead down the river.

Q. Did you go down inside?

A. Yes, sir.

Q. Did you state how fast the flood was moving up?

A. There was not scarcely any tide yet; just making up.

Q. Did you see the Starbuck?

A. Yes, sir.

Q. Where was she?

A. She was alongside the ship.

133 Q. When did you first notice the Starbuck?

A. Well, I think she was just going along the side of the ship. When I first saw the ship I think she was just alongside then.

Q. On what part of the ship was she?

A. On the starboard quarter.

Q. Did she assist in taking these boats in?

A. Yes, sir.

Q. That is, after the collision?

A. Yes, sir; when they let go, we picked them up.

By Mr. VAN SANTVOORD:

Q. You were acting under the directions of the captain and the pilot of the Connecticut?

A. Yes, sir.

Q. And the different orders you got from them were obeyed?

A. Yes, sir.

By Mr. OWEN:

Q. Where was the steamer when you saw the Starbuck coming along?

A. I think the Starbuck went along in the neighborhood of Fulton Ferry, or a little below. I saw her when she went alongside, but I can't swear whether it was the first time or the second time I looked at the steamer.

Q. Was it near Wall street or Fulton Ferry?

A. Near Fulton Ferry.

Q. You couldn't swear whether she was made fast?

A. No, sir.

Cross-examined:

Q. Is it not, when you see an object above you in the river, very difficult to determine what she is abreast of?

A. It is, a good way off.

Q. If it is anywhere within a mile off?

A. No, sir; I don't think it is.

Q. Can you tell with accuracy what she was abreast of?

A. Not right square abreast.

Q. She is up the river?

A. Yes, sir.

134 Q. And you do not ordinarily think about what she is abreast of, and isn't it very difficult to tell exactly what she is abreast of; if you are looking up to her, isn't it very difficult?

A. Not with a big ship like that.

Q. Big or little, every day's experience, as you cross the river, don't it show you that?

A. Yes, sir; if it is far off.

Q. I mean half or quarter of a mile off?

A. You can determine a quarter of a mile or half a mile off.

Q. Can't you tell with accuracy?

A. I might, a big ship like that.

Q. Would it make any difference about the size?

A. Yes, sir.

Q. Now, let's see; you came round pretty close to Governor's Island?

A. No, sir.

Q. Well, how near?

A. We went close to the buoy.

Q. How near to Governor's Island?

A. Why, it was within——
Q. (Interrupting.) I am talking about the S. A. Stevens.
A. She was a long way off.
Q. I am talking about Governor's Island.
A. We were as far off Governor's Island as that buoy. I supposed we cleared the buoy.
Q. You were southward of the buoy?
A. Yes, sir.
Q. Did you notice how far southward of the buoy you went?
A. Yes, sir.
Q. How close?
A. I couldn't tell.
Q. A hundred feet?
A. No, sir.
Q. Fifty feet?
A. Yes, sir; as near as I could tell.
Q. Do you know anything about the points of the compass?
A. Some.
Q. Do you know——
A. I can steer by a compass.
Q. Do you know the points of the compass in and around the buoy, so as to tell what they are?
135 A. Not altogether.
Q. Can you tell how, when you reached or were abreast of the buoy, how you were heading by the compass?
A. I couldn't tell you by the compass.
Q. Can you form any idea?
A. Yes, sir.
Q. Do you know whether you were heading to the southward or eastward?
A. That was when we were going by the buoy.
Q. You can tell me by a point, if you made the observation?
A. I didn't make the observation by a compass.
Q. Now, as to the objects on the Brooklyn shore as you headed at the time you passed the buoy, how would you have reached the Brooklyn shore if you had kept on that course?
A. I couldn't tell.
Q. Didn't you see the Brooklyn shore ahead of you?
A. Yes, sir.
Q. About what point would you have reached?
A. I couldn't tell.
Q. Would you have struck the Brooklyn shore if you had kept on the course you were when you were abreast of that buoy?
A. Yes, sir; we would.
Q. Now, would it have been at Wall Street Ferry?
A. When we were heading between the buoy and the island?
Q. I mean when you got abreast of the buoy, before you began to turn up, you would probably have struck the Brooklyn shore at about Wall Street Ferry?
A. We would have gone in about Baltic or Congress street.
Q. That is below the South Ferry?
A. Yes, sir.
Q. That is the way you passed the buoy?
A. Yes, sir.
Q. When you passed the buoy then you began to change your course?
A. Yes, sir.

Q. Now how far did you keep your course before you began to change?

A. We changed our course as soon as we got to the buoy.

136 Q. Had the boat passed it?

A. No, sir.

Q. Now, you noticed that you changed then?

A. Yes, sir.

Q. Now, what did you do with your helm?

A. Yes, sir.

Q. What?

A. We shoved her round.

Q. What did you do with your helm? I am talking when the Connecticut was under way; when you were heading on the Brooklyn shore, and you would have struck Baltic or Congress street. At that time did you do anything with the helm of that steamer? Did you put your wheel over hard?

A. To starboard.

Q. Did you put it hard-a-port?

A. I couldn't swear to that.

Q. Can you tell how far you did put it?

A. No, sir.

Q. How long did you keep that starboard wheel?

A. I couldn't tell.

Q. Can you tell how far you ran on that starboard wheel?

A. I couldn't tell.

Q. Was it no longer than to straighten up?

A. That is all.

Q. Then you steadied?

A. Yes, sir.

Q. Do you remember you steadied?

A. Yes, sir.

Q. How far had you passed the buoy when you steadied; had you passed with the whole tow?

A. I don't think we had.

Q. Had half?

A. I can't tell.

Q. Had you any?

A. Yes, sir.

Q. Now, suppose when you steadied on that course, and kept on that course, how far would that have carried you to the southward of Wall Street Ferry?

A. It would not have carried us to the southward at all. We straightened right up to the drill.

Q. I want to know the points you would have struck on the New York side?

A. We would have landed probably about Wall street.

137 Q. Well, your idea is, that you would have struck about Wall Street Ferry, on the making of the shore?

A. Of course.

Q. Your judgment is, that when you got straightened up, keeping still on that course, you would have reached Wall Street Ferry on the New York side?

A. Yes, sir.

Q. Did you range your course at all, to see whether you would or not, or is it a mere conjecture?

A. Yes, sir.

Q. So that you would have come where? Outside the end of the pier?

A. Yes, sir.

Q. About how much outside the end of the pier?

A. Fifty or 60 feet.

Q. How far did that course carry you outside the drilling machine?

A. About 100 feet.

Q. About 100 feet outside the drilling machine?

A. Yes, sir.

Q. Is that your clear recollection or judgment about the position of things there?

A. Yes, sir.

Q. Now you kept on that course; did you look to see if there was anything up the river?

A. Yes, sir.

Q. Did you have any lookout on your boat?

A. No, sir; nobody but myself.

Q. Then you kept on until you were abreast of the drilling machine?

A. Yes, sir.

Q. Then how far to the southward were you?

A. About 100 feet.

Q. How much to the eastward?

A. How much above the machine?

Q. Yes.

A. We went right alongside of it.

Q. Then you were abreast of it?

A. Yes, sir.

Q. Up to that time you had not seen the steamer?

A. No, sir.

Q. Then at that point the Connecticut stopped?

A. Yes, sir.

Q. And you commenced to work in hard?

A. Yes, sir.

Q. Did you turn her square round, or nearly so?

138 A. Nearly so.

Q. You worked her ahead and round?

A. Yes, sir.

Q. Now, at the time you first discovered the steamer, how much on to the New York shore, about what point was the Connecticut's head?

A. Well, she was heading a little on the docks.

Q. About how much; pier 10 or 11?

A. It must have been pier 13 or 14.

Q. How many points had you changed, when you first saw the steamer?

A. I don't know.

Q. About how many?

A. I couldn't tell you.

Q. Could you form any idea?

A. No, sir.

Q. You were heading pretty well on shore?

A. At the time she hit?

Q. No, at the time you first saw her?

A. We were heading, as I told you, about pier 14.

Q. How many points had you commenced to turn when you first saw the steamer?

A. I couldn't tell you.

Q. Well, had you got round 3 points, 4 points?

A. I couldn't tell you.
Q. Couldn't tell anything about it?
A. No, sir.
Q. Had you got your head pretty well on to the New York shore?
A. At the time she hit the boats?
Q. That is, the first time you blew the whistle, when you commenced turning in?
A. Yes, sir.
Q. As the steamship was then heading at the time you saw her, how near would she have passed, in your judgment, to that drilling machine?
A. I couldn't say.
Q. One hundred feet?
A. More than that.
Q. Two hundred feet?
A. I don't know.
Q Could you form any idea?
A. No, sir.
Q. Would she pass pretty close to you?
A. Yes, sir.
Q. (By the COURT.) Which side would she pass, if she kept on the side you first saw her?
A. She would pass to the southward of us.
139 Q. That is, to the southward of the Stevens?
A. Yes, sir.
Q. And the Stevens at that time was just eastward of the drilling machine?
A. Yes, sir.
Q. Then you had swung in, until you had got about abreast of the drilling machine?
A. We were close to the drilling machine when we went up there.
Q. One was abreast when you were coming up, and another was abreast when you were crossing?
A. Yes, sir.
Q. Had you got abreast of her when you blew your two whistles?
A. Yes, sir; we were outside, and heading on.
Q. And gradually crossing abreast of her to the eastward?
A. Yes, sir.
Q. Gradually crossing the drilling machine as it lay there, towards the New York docks?
A. Yes, sir.
Q. Whatever the distance was between you and the drilling machine when you commenced to turn in, there was distance enough to allow the tow to swing before the collision, united with your headway, to have produced the shape and form of the tow as put on that diagram; if you do not understand me I will repeat it.
A. I understand you; yes, sir.
Q. And at the time you blew the two whistles, of which you have spoken, the tow had assumed, and was in the shape stated on that diagram?
A. Yes, sir.
Q. And you say at that time the tide was not strong?
A. No, sir; against that drilling machine there was hardly any tide.
Q. In the first place the tide was not strong enough to carry a tow round?
A. He stopped when the three whistles were blown.

Q. When you blew your two whistles, that was the shape of the tow?
A. Yes, sir.
Q. And the shape on the map was produced by your working ahead?
A. The swing.
140 Q. Working ahead on the swing with a little motion there was of the tide?
A. I don't know about that.
Q. Was not that right?
A. That was the position we were in when we shoved round.
Q. How was that produced?
A. By working ahead.
Q. That was about the shape of it?
A. Yes, sir.
Q. And that had been produced by your forward motion?
A. Yes, sir.
Q. And whatever there was of the swing of the tide?
A. By the Connecticut turning.
Q. The course of the Connecticut is very correctly described?
A. Yes, sir.
Q. And that had been produced by your working her in at the head; is not that so?
A. Well, I don't know whether it is or not; we were working ahead.
Q. That tow had got in the shape, as stated in that diagram?
A. Yes.
Q. And that was produced by your working the tow ahead, and before she stopped you began to work her in?
A. We didn't work her in any.
Q. How did you get your tow straightened out?
A. The tide.
Q. Was there tide enough to do it?
A. The tide was working up.
Q. At the time of the second whistle did your tow work into the position, as stated on that diagram?
A. That was the way it lay when they blew the whistles.
Q. That was the first time they blew the whistles?
A. Yes, sir.
Q. Whatever your distance was in the river you had gone in and there had been time enough for the tow to assume that shape when you blew the two whistles?
A. Yes, sir.
Q. Now was there any time that you said anything to the pilot of the Connecticut about his not blowing his whistles?
A. No, sir.
141 Q. Didn't you say in the presence of Captain Brandon, "Why didn't you blow your whistles," or words to that effect, and didn't yos answer him, "It's no use blowing to those steamers; they won't pay any attention to it?"
A. No, sir.
Q. Sure of it?
A. Yes, sir.
Q. When you first saw the steamer, did you see the Starbuck?
A. Well, I can't tell whether it was the first time or the second time.
Q. That you saw her at all?
A. I see her alongside the ship.
Q. I mean alongside the ship, or anywhere else?

A. The first I saw of her was alongside the ship.

Q. Then the first time you saw the Starbuck, she was alongside the starboard quarter of the ship?

A. Yes, sir.

Q. When was it that you saw the Starbuck, and was it when the danger whistles were blown, or when the 2 whistles were blown?

A. I saw her before the danger whistles.

Q. Can you say whether it was before the 2 whistles?

A. It was between the 2 times.

Q. Can you form any judgment where the steamship was at that time?

A. She was about half way between us and Fulton Ferry when we blew the 3 whistles.

Q. I am talking about when you saw the Starbuck?

A. She was half way between the Fulton and Wall Street Ferries; I saw her, however, before we blew the alarm whistles.

Q. Is that your best judgment that she was about half way between the Fulton and Wall Street Ferries; and how far out in the river?

Q. I can't tell.

Q. Was she coming down along the shore?

A. She was pretty near when she came down.

Q. How was she heading down the New York shore?

A. I can't tell exactly.

142 Q. You can't tell after that time whether there was any change?

A. She didn't change her course.

Q. You don't think she changed her course from the time you saw her?

A. I didn't see her.

Q. She made no change that you noticed?

A. I say I don't know anything about it.

Q. Did she make any change that you noticed?

A. I didn't notice any.

Redirect:

Q. How was the weather; was there any mist or fog?

A. No, sir; it was clear.

Q. No difficulty in seeing great distances?

A. No, sir

Q. Do you know Captain Brandon of the Starbuck?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Some.

Q. What was that conversation?

A. Well, I went alongside of him when she hit these boats and I asked him what kind of a move that was, and he said that if he had been on board of the ship it would not have happened.

Q. Did you notice how many boats the Connecticut had at that time?

A. Well, she had about 23 or 24 boats; she had 5 lengths and each length was fully——

Q. Is that the large tow?

A. No, sir.

FREDERICK STEBBINS, sworn and examined on behalf of the Connecticut, testifies as follows:

Q. What was your business in August, 1875?

A. Captain of the tug-boat Conover.

Q. What had been your business?

A. Pilot.
Q. Pilot where?
A. Albany Harbor and New York.
Q. How many years had you been tugging in the New York Harbor, at that time, August, 1875?
A. About 5 or 6 years.
143 Q. What was the business of this tug Conover?
A. Towing round the harbor.
Q. Where was she on the morning of the 18th of August?
A. Lying at the end of the pier 4, East River.
Q. Was she lying there at the time the Connecticut was coming to?
A. It was about the time she was coming to.
Q. The Connecticut?
A. Yes, sir.
Q. Did you see this collision between the boats in the tow of the Connecticut, and the steamship?
A. I didn't see it until it happened; I had got by; I had left pier 4 when it happened.
Q. Well, you saw the Connecticut?
A. I saw the Connecticut, and I saw the steamer when she run into the hawser tier.
Q. Well, did you leave this pier 4?
A. Yes, sir.
Q. Was the Connecticut near there?
A. Yes, sir.
Q. Where was the Connecticut at the time you left pier 4?
A. She was running by—along this drilling machine.
Q. Where did you go to?
A. Up the East River.
Q. Where bound?
A. I was bound up the East River; I forget where; somewhere after a boat; along about pier 45, I think.
Q. Well, what course did you make in coming up?
A. Along the New York shore we went about to the centre of the river.
Q. How was the tide at that time?
A. The last of the flood.
Q. The last or first of the flood?
A. The last of——
Q. (Interrupting.) What?
A. I forgot whether it was high water or low water slack.
Q. Well, as you went along by, did you see the steamship?
A. Yes.
144 Q. Well, where were you when you first saw her?
A. I was laying at pier 4.
Q. When you first saw the steamship?
A. Yes, sir.
Q. Then you say you went up the river?
A. Yes, sir.
Q. Where was the steamship when you first saw her?
A. I should judge by Fulton Ferry, Brooklyn side.
Q. Then, before the collision, you say you went up?
A. Yes, sir.
Q. Well, now, did you pass the steamship?
A. Yes, sir.
Q. Where did you pass her?

A. I should think by Wall street.
Q. That was before any collision?
A. Yes, sir.
Q. Did you hear any signals blown?
A. Yes, sir.
Q. On what vessel?
A. The Connecticut.
Q. What signals had been blown?
A. Blew two whistles while I was laying at the pier 4.
Q. And the steamship, at that time, was off Fulton Ferry?
A. Yes, sir.
Q. Did you hear the second signal on the Connecticut?
A. Yes, sir.
Q. Where were you at that time?
A. I might have been, perhaps, abreast of piers 9 or 10.
Q. Somewhere there?
A. Yes, sir.
Q. Where was the steamship at that time?
A. She was between Fulton and Wall Street Ferries. I passed her off about Wall Street Ferry.
Q. Was there anything in the way in the river, on the other side?
A. No, sir; not that I could see.
Q. All clear, was it?
A. Yes, sir.
Q. Did you see the steamship at the time she cut into the tow?
A. I got by her then; I saw her go into the haw*saw* tier and back out.
145 Q. Then you had got by her?
A. Yes, sir.
Q. Did you observe at what rate of speed she was going?
A. No; not particularly, only a head motion.
Q. Did you notice whether she stopped or not?
A. I did not notice whether she stopped or not.
Q. Did you notice how the tow was tailing behind the Connecticut?
A. Well, there was a tail right across the river, as near as I could judge.
Q. Did you notice it?
A. Yes, sir.
Q. Well, how as to the room on the Brooklyn side of the tow for the steamship to pass?
A. I considered she had plenty of room.
Q. What time in the morning was this?
A. About half past 5.

Cross-examined:

Q. You were lying at pier 4; were you fast to the pier?
A. Yes, sir.
Q. How long had you been lying there?
A. Well, I don't know; might perhaps have laid there half an hour.
Q. You had made fast there?
A. Yes, sir.
Q. Then while you were lying there fast to that pier, you heard two whistles?
A. Yes, sir.
Q. You looked up and saw it was the whistles of the Connecticut?
A. Yes, sir.
Q. And at that time you saw the steamer?

A. Yes, sir.

Q. Then you cast off pier 4, got under way, went round and got up about abreast of Wall Street Ferry when the danger whistles were blown?

A. Yes, sir.

Q. What time elapsed between these two?

A. I cannot tell.

Q. About what time?

A. I cannot tell, I am sure.

Q. About what time?

A. It may be three or five minutes.

Q. Is that your best judgment as to time?

146 A. Yes, sir.

Q. What is the distance between pier 4 and Wall Street Ferry?

A. I cannot tell that.

Q. Can you form any idea?

A. Well, perhaps three-quarters of a mile.

Q. What was your speed an hour?

A. I do not know.

Q. About how much?

A. I cannot tell.

Q. You can form some idea how fast you were running?

A. Might be running 10 miles an hour.

Q. You had time to cast off, get under way, and run from pier 4 up to Wall Street Ferry between the two whistles and the time when you passed Wall Street Ferry, when the danger signals were blown?

A. Yes, sir.

Q. Which side of the steamer did you pass?

A. New York side.

Q. You went up inside the tow—up inside both of them?

A. Yes, sir.

Q. How far off did you think the steamship was from the piers when you passed her?

A. I judge she was about the middle of the river.

Q. That is the usual course?

A. The usual course is to keep down to the Brooklyn shore until you get to Wall Street Ferry.

Q. You saw no change in her course?

A. No, sir.

Q. And she was running down on her course, whatever it was, about the centre of the river?

A. Yes, sir.

Q. So as to carry her between the buoy and Coenties Reef; is that so?

A. I don't know.

Q. Was that your judgment?

A. That was my judgment.

Q. It would not carry her inside Coenties Reef, or outside Diamond Reef?

A. I think it would have carried her into pier 8.

Q. Did you see her change?

A. No, sir.

Q. Did you keep her in sight from the time you saw her until the collision?

A. Yes, sir.

147 Q. Did you see any change in her course from the time you saw her?
A. No, sir.
Q. Heading always the same?
A. Yes, sir.
Q. When the Connecticut blew two whistles, how was the Connecticut heading?
A. She was heading in for about pier 8.
Q, And that was just about the point she was abreast of?
A. Yes, sir.
Q. And from that time up to the time you passed, until the collision happened, there did not seem to be any change in her headway?
A. Her head was shoved down the river a little more; her engines were stopped when I noticed her.
Q. Was there any one working her in?
A. The Stevens was alongside of her.
Q. Was there any one working her in?
A. She was apparently laying still.
Q. Then, so far as you saw, from the time she blew the danger whistles until the collision, she did not change her position?
A. No, sir.

JOHN TEMPLE, sworn and examined on behalf of the Connecticut testifies as follows:
Q. Were you a deck hand on the Connecticut at the time of the collision?
A. Yes, sir.
Q. On what part of the Connecticut were you?
A. On the aft deck.
Q. Near what?
A. Near the bits.
Q. That is the bits to which the hawsers are tied?
A. Yes, sir.
Q. Were you there when the Connecticut was going into the East River?
A. No, sir.
Q. When did you go there?
A. I got there just as she was turning round to attend to the hawsers.
Q. Just as she was turning round what?
A. The drilling machine.
Q. Did the Connecticut's engines stop?
A. As she was turning?
Q. Yes.
A. Yes, sir.
148 Q. When you came there?
A. Yes, sir.
Q. Did you see the steamship before the collision?
A. Yes, sir.
Q. Where was the tug when you saw this steamship?
A. Laying cross-ways of the river.
Q. Near the drilling machine?
A. I cannot say exactly how far she was above the drilling machine.
Q. Well, where was the steamship at that time?
A. She was up by Fulton Ferry.
Q. Do you know where the stone abutment of the bridge is?
A. Yes, sir.
Q. How near to that?

A. Well, I can't say; she might have been between Fulton Ferry and the abutments. I can't say; but as near as I could tell she was near Fulton Ferry.

Q. Did you hear any signal on the Connecticut?

A. Yes, sir.

Q. What was it?

A. Two signals.

Q. At that time where was the steamship?

A. She was then at Fulton Ferry.

Q. Any answer to that?

A. No, sir.

Q. Any signal after that on the Connecticut?

A. Yes, sir.

Q. What was that?

A. Three whistles.

Q. Distinct and clear?

A. Yes, sir.

Q. Where was the steamship at that time?

A. The steamship was below Fulton Ferry, when the three whistles were blown.

Q. How far below; how near as between where you first saw her, and the place of the collision?

A. She might have been a length below Fulton Ferry.

Q. You think she was nearer to Fulton Ferry than she was where you were?

A. Yes, sir.

Q. Was the steamship going ahead?

A. Yes, sir.

Q. How fast?

A. I can't say.

Q. What was the Connecticut doing after the first signal, down to the time of the collision?

149 A. She was lying still.

Q. Did you see where the steamship struck?

A. Yes, sir.

Q. What did she hit?

A. The canal boat.

Q. What canal boat?

A. On the starboard side of the hawser tier.

Q. What tier?

A. Head tier.

Q. Did you observe whether there was any change in the course of the steamship, from the time that you saw her, up to the time of the collision?

A. No, sir.

Q. You didn't observe whether there was or not?

A. No, sir.

Cross-examination:

Q. When you first saw her, did you see the Starbuck?

A. No, sir.

Q. When did you see the Starbuck?

A. When she got within about a length of the hawser tier.

Q. When the steamship got within about a length of the hawser tier, then you saw the Starbuck?

A. Yes, sir.

Q. That was the first you saw of her?
A. Yes, sir.
Q. Where was she then?
A. On the starboard side.
Q. Then you were between her and the Coenties pier?
A. Sir?
Q. You had seen the steamship from the time she was about abreast of Fulton Ferry?
A. Yes, sir.
Q. And from that time until she got within a length of the hawser tier you had not seen the Starbuck?
A. No, sir.

ANTHONY GEOGHAGEN, sworn and examined on behalf of the Connecticut, testifies as follows:
Q. Were you on the Connecticut in August, 1875?
A. Yes, sir.
Q. In what capacity?
A. Look-out.
150 Q. And deck hand?
A. Yes, sir.
Q. Were you on the Connecticut at the time she was coming to in the East River?
A. On the aft deck by the bitts.
Q. Near where this last witness was?
A. Yes.
Q. (By Judge BEEBE.) On the aft end of the bitts?
A. I was right by the bitts.
Q. Aft end?
A. Yes, sir.
Q. (By Mr. VAN SANTVOORD.) Did you hear any signals on the Connecticut?
A. Yes, sir.
Q. What was the Connecticut doing then?
A. She was laying still.
Q. Where was the steamship?
A. She was between the abutments and the Fulton Ferry.
Q. What did the steamship hit?
A. The canal boat.
Q. What canal boat, and where was it?
A. On the starboard side of the head tier.
Q. Did you notice what part of the canal boat she hit?
A. Yes, sir; forward on the aft cabin.
Q. What did it do to the canal boat?
A. Cut her very nearly in two; went in about half ways.
Q. What was the length of your hawsers at that time?
A. I should think it was in the neighborhood of 200 feet or over, may have been more, may have been less.
Q. If you noticed, how was the tow tailing at the time of the first signal from the Connecticut?
A. I think it was on a kind of an elbow.
Q. Well, which way were the stern boats—what was the direction of the stern boats—across the river or down the river, or how?
A. I think the stern was down.
Q. Off what quarter of the Connecticut did the tow swing, the starboard quarter or the port quarter?

A. I think it was off the port quarter.

151 Cross-examined:

Q. When you say you think, do you know?

A. Well, not exactly.

Q. Now, from the time of the two whistles up to the time of the collision, did the Connecticut work ahead, or did she go ahead from any cause?

A. That I don't know; the hawsers were slack.

Q. Did they tauten?

A. No, sir.

Q. Then, from the time of the two whistles up to the collision, did the hawsers tauten?

A. No, sir.

Q. Then, so far as you know, neither the Stevens nor the Connecticut moved ahead any after you heard the two whistles?

A. The Stevens was working ahead.

Q. Was she working you ahead?

A. That I can't say.

Q. Then you can't *saw* whether you were working or not?

A. (No answer.)

Q. Did the Connecticut get any headway on her from any cause?

A. That I don't know.

Q. Is it your recollection that she had not any?

A. I don't think she was moving.

Q. You don't think that, from the time of the collision until she blew the two whistles, she had changed at all?

A. No, sir.

Q. Look at the diagram and say if you think that was the way the tow and the Connecticut was heading at the time the first two whistles were blown. (Witness looks at the diagram.) Now, you have observed that on that diagram, the position in which it is stated the Connecticut and the tow were at the time the two whistles were blown. Is that your judgment as to the way they were heading?

A. Yes, sir.

Q. And the tail of the tow?

A. Yes, sir.

Q. And that shows the Connecticut and hawser and the tow tail nearly straight across the river?

152 A. Yes, sir.

Q. That is your idea?

A. That is nearly straight across the river.

Q. How long a time elapsed between the time you heard the two whistles and the collision?

A. I cannot exactly say.

Q. Give your best judgment.

A. Three or four minutes.

Q. Suppose I test you a little; when I say now that then the two whistles were blown, then I want you to think; and when the time is up, say it is up when the collision took place; have it in your mind; when I say now, then the two whistles were blown?

A. Yes, sir.

Q. I am taking the time when she whistled twice; when I say now, then you hear the two whistles? (Judge Beebe looks at his watch until the witness answers.) Now you hear the whistles.

A. (After pausing.) About that length of time.

Judge BEEBE. That's 58 seconds.

GEORGE SPOOR, sworn and examined on behalf of the Connecticut, testifies as follows:

Q. Were you employed on the Connecticut in August, 1875?
A. Yes, sir.
Q. What were you on there?
A. Engineer.
Q. Were you engineer at the time of that collision in question?
A. I was.
Q. Where were you on the Connecticut when she was coming to?
A. At the engine room.
Q. Where is that engine room situated?
A. About amidships; if anything, a little after amidships, on the main deck.
Q. Do you recollect the signal you got?
A. I got bells to slow and stop.
Q. Were these the only bells you got—you got bells to slow and stop?
A. These were the only ones in the East River.
153 Q. Did you obey them?
A. Yes, sir.
Q. Did you know where this drilling machine was?
A. Yes, sir.
Q. Did you look out and see where the Connecticut was in reference to that machine?
A. I did when we were laying still.
Q. Where were you?
A. I was in the engine room.
Q. Where was the boat, if you looked out to see where you were, in reference to the drilling machine? Now, I want to know what you saw?
A. I saw the drilling machine from our gangway, a little aft of the engine room.

By the COURT:

Heading how; straight on to New York?
A. About piers 8 and 9.
Q. Do you know whether that was before or after the collision?
A. That was before.
Q. Did you see the collision?
A. I didn't.
Q. How do you know there was any?
A. I heard a crash.

Cross-examined:

Q. How long a time elapsed between the time you got the signals to slow and stop, and the time when you heard the crash of the collision?
A. I should think it was more than 10 minutes from the time I got the bells to slow and stop.
Q. How long a time elapsed between the bells to slow and stop?
A. I cannot tell you; we were running slow.
Q. How long a time elapsed between the time you speak of and your hearing the crash?
A. More than 10 minutes.
Q. As a matter of course you don't know how your boat was heading at that time. You were in the engine-room and can't tell anything about it; but about the time of the collision you saw you were lying head on New York, and nearly abreast of that drilling machine?
A. Yes, sir.

ABRAHAM BUSH, sworn and examined on behalf of the Connecticut, testifies as follows:

154 Q. Were you engineer on the Stevens in August, 1875?
A. Yes, sir.
Q. Were you on board and on duty at the time she came off pier 7?
A. Yes, sir.
Q. What signal did you get, or bells?
A. I got a bell to slow, and then stop.
Q. At the time you stopped, were you in the engine room?
A. Yes, sir.
Q. How close together were those bells to slow and stop?
A. They gave you time to slow, and then to stop.
Q. In quick succession?
A. Yes, sir.
Q. Did you get any other bells?
A. No, sir; not immediately.
Q. What you did get you obeyed?
A. Yes, sir.
Q. Did you look out to see the position at the time you got the bell to stop?
A. I did not look out until after I got the bell to stop.
Q. How soon after?
A. Right away after. I looked out before we stopped.
Q. How was the Connecticut heading at the time before you stopped?
A. She was going round the drilling machine then.
Q. And after, how was she heading?
A. After that, we got about half-way round and then stopped, and then she lay head on to pier 7 and 8.
Q. Did you see the steamship?
A. Yes, sir.
Q. When.
A. I saw her when she was up at Fulton Ferry.
Q. Where were you?
A. On deck, right by the engine room.
Q. In the engine room can you look out?
A. Yes; see all over the river from my engine room.
Q. Did you see any signals on the Connecticut?
A. I heard her blow two whistles.
Q. Did you see the steamship after that time?
155 A. No, sir, I was not looking at her then.
Q. When did you first see the steamship?
A. When we were coming from the buoy up to the drilling machine. Just before we turned the drilling machine, I saw her coming along past Fulton Ferry.
Q. Did you see her before the signals of the Connecticut?
A. No, I don't think I did.

Cross-examined:

Q. You were heading up the East River?
A. Yes, sir.
Q. And you looked up and saw the steamer coming down?
A. Yes, sir.
Q. As far as you could judge, she was about abreast of Fulton Ferry?
A. Yes, sir.
Q. Then how long after that was it that you heard the two whistles?
A. Well, it was very soon after that.

Q. About how long?
A. Probably a minute or two.
Q. A minute or so after you heard the two whistles?
A. Yes, sir.
Q. Do you know whether the Connecticut had stopped working her engine when you saw the steamer?
A. We were both laying still at the time.
Q. Well, had you stopped when you first saw the steamer?
A. No, sir; we were coming up around the drilling machine.
Q. You were heading up the river?
A. Yes, sir.
Q. You had not commenced to turn in when you first saw her?
A. No, sir.
Q. At the time when you first saw the steamer, had the Connecticut stopped?
A. I don't know.
Q. Had you stopped?
A. I was pushing her around.
Q. She was working?
A. I don't know whether she was.
156 Q. At any rate, did you know when you saw the steamship that you had begun to round, or had she not yet begun to round?
A. We had begun to round.
Q. Well, after you had begun to round, then came the two whistles?
A. Then came three whistles.
Q. First two?
A. Yes, sir.
Q. Had you begun to round when you got the two whistles?
A. I didn't notice.
Q. You didn't notice when you began to round and when you heard the two whistles?
A. I heard the two.
Q. At the time you heard the two whistles, you had not commenced to round?
A. We were on the turn.
Q. Then you were all the time on the turn?
A. Yes, sir.
Q. It was not any part of your business to keep a lookout?
A. No, sir.
Q. You had your engine to take care of?
A. Yes, sir.
Q. (By the COURT). What rate of speed was this tow being moved from Diamond Reef up?
A. Just merely drifting with the tide. When we fetched them up, we gave them a turn or two just to keep their hawsers out of the water.
Q. The tide was strong enough to drift you all up?
A. We were all on the swing; yes, sir.
Q. How fast do you think you were going?
A. We were not going with any speed at all.
A. About how much; you had steerage-way?
A. No, sir; I don't think we did.
Q. When you got the bell to slow, you were running open?
A. Right open.
Q. You were running right open?
A. Yes, sir.
Q. And when you got the bells to slow, you shut right off?

A. Yes, sir; and then I stopped.
Q. And that you had been doing ever since you came into the East River?
A. No, sir.
157 Q. When did you commence to run right open?
A. After we turned the buoy, then we ran probably five minutes and shut her down.
Q. When did you open her again?
A. Not until we got to the drilling machine.
Q. Then you opened her.
A. Yes, sir.
Q. Was that before or after you commenced to turn in?
A. When we commenced to turn in.
Q. How long had you been running under a slow?
A. I didn't take the time.
Q. For five minutes after passing the buoy you ran wide open?
A. Yes, sir.
Q. And when you saw the steamer, you ran wide open?
A. Yes, sir.

Case on behalf of the Connecticut suspended for the present.

Evidence for claimant of Othello.

THOMAS MURRAY, sworn and examined on behalf of the Othello, testifies as follows:

Q. (By the COURT.) Were you the pilot on the Othello?
A. Yes, sir.
Q. How old are you?
A. Sixty-three.
Q. Where do you live?
A. I live in Williamsburg.
Q. What is your business?
A. Pilot, by way of Sandy Hook.
Q. New York pilot?
A. Yes, sir.
Q. How long have you been a pilot?
A. I will be thirty years a pilot in September.
Q. Are you entirely familiar with the port of New York and it's harbor?
A. Yes, sir.
Q. Have you, during your experience, piloted all classes of vessels in the harbor of New York?
A. Yes, sir.
Q. Steamers as well?
A. Yes, sir.
Q. How as to classes; whether as to the largest?
A. I have piloted from the biggest to the smallest.
158 Q. And how as to the rivers North and East; have you piloted from both rivers?
A. Yes, sir.
Q. Sailing vessels, as well as steamers?
A. Yes, sir.
Q. Do you know the steamship Othello?
A. Yes, sir.
Q. Did you know her on the morning of the 18th August, last?
A. Yes, sir.

Q. Were you on board of her that morning?
A. Yes, sir.
Q. For what purpose?
A. Take her to sea; pilot her out.
Q. About what time did you get on board?
A. I went on board about 4 o'clock in the morning.
Q. Where was she bound to?
A. Hull, England.
Q. Is she one of a regular line?
A. Yes, sir.
Q. Regular sailing days?
A. That I don't know; I think she was going to sail the day before, but she had not got ready.
Q. They have regular sailing days?
A. Yes, sir,
Q. You went on board about 4 o'clock?
A. Yes, sir.
Q. Where was she laying?
A. Pier 44 East River.
Q. Which side of the pier?
A. Easterly side.
Q. About the foot of what street is that?
A. Rutgers street.
Q. How was she laying?
A. Laying head in the slip.
Q. Stern out?
A. Yes, sir.
Q. What time did she get under weigh?
A. We backed out of the slip about 5 o'clock; about five minutes her way.
Q. When you backed out, how was the tide?
A. Flood tide.
Q. Didn't you have any steam tug?
A. Yes, sir.
Q. What one?
A. N. B. Starbuck.
Q. How did the steam tug take hold of you?
159 A. I gave her a hawser from our port quarter, so that she could take us straight out.
Q. So as to hold her up?
A. Yes, sir.
Q. That is, to hold her up from drifting?
A. Yes, sir.
Q. How far out into the river did you back; by the way, did you use the machinery of the steamship in backing out?
A. Yes, sir.
Q. And the tug was only used to keep her from drifting?
A. Yes, sir,
Q. Did she back straight out?
A. Yes, sir.
Q. About what was the length of the Othello?
A. I should think she was 350 or 400 feet long.
Q. How was she as to being deeply laden?
A. She was filled; she drew 22 feet 6 inches of water.
Now, after backing away from the piers, how far did you get? did you straighten out?

A. I backed her until the bow swung clear of the dock.
Q. Well, how did you get the head on?
A. Well, sir, I got the steamboat to the quarter, and she pulled our head round.
Q. Now, at the time you got headed down the river, about abreast of what point were you? what pier?
A. About pier 44. We didn't go down any.
Q. The flood tide had about kept you up to that pier?
A. Yes, sir.
Q. What part of the river were you in?
A. Just clear of the docks
Q. Whereabouts did the tug take her position when you got headed down?
A. On our port bow.
Q. Which way did you intend to go to sea?
A. Intended to go down the river and go out between the reefs.
Q. Go out between what points?
A. Between the Diamond and Coenties Reefs.
Q. Was that the regular course?
160 A. Yes, sir. I was not more than 500 feet from the New York shore all the way down.
Q. How would you have gone as to Diamond Reef?
A. I would have gone to the southward of it.
Q. How close would you have shaved it?
A. I suppose I would have gone a ship's length to the southward.
Q. Is that the regular course of taking large steamers out there?
A. They have all got to go betwixt the two reefs. Some will go over to Brooklyn; some one way, and some another; and there is water enough above Coenties Reef on the New York side, and above Joralemon street, on the Brooklyn side; at Joralemon street there is a sand-bank.
Q. Where does that sand-bank run?
A. It runs down towards Governor's Island.
Q. So that the only outlet is between these two reefs?
A. Yes, sir; for large vessels.
Q. I mean the vessels drawing 22 feet 6 inches of water; is there any way of a vessel going down between Diamond Reef and Governor's Island?
A. No, sir.
Q. What is the reason?
A. The channel is too narrow in the first place, and there is not water enough.
Q. So that the regular course is between those two points?
A. Yes, sir.
Q. Now, did you see the Connecticut that morning?
A. I did.
Q. Where were you on the steamer?
A. I was on the bridge.
Q. Forward bridge?
A. Yes, sir.
Q. About how far was that from the stem?
A. I should think about 30 or 40 feet.
Q. How many men at the wheel?
A. Two.
Q. Was Captain Mills aboard?
A. Yes, sir.

Q. Where was he?
A. Don't know.
Q. Where was Captain Rogers?
161 A. He was standing by the men at the wheel, by the telegraph.
Q. What kind of a morning was it?
A. A hazy morning.
Q. When you got straightened down off pier 44, at about that distance in the river, then what did you do?
A. Came along slow.
Q. About what rate of speed do you think you came?
A. I couldn't exactly say; about two knots.
Q. Did the Starbuck leave your stem?
A. As soon as we got straightened out, we let go the hawser.
Q. Then you took command of the steamer?
A. Yes, sir.
Q. Whereabouts did the steamer go?
A. The Starbuck let go of our hawser and went round us, and came up on the starboard quarter.
Q. Did you see the Connecticut that morning with this tow?
A. Yes, sir; I saw the Connecticut.
Q. When you first saw her, abreast of what point were you?
A. About abreast of Fulton Ferry.
Q. At that time where was the Connecticut?
A. The Connecticut was on our port bow, about a point, or a point and a half, heading parallel to us; that is to say, we were going down S. S. W., and she was coming E. N. E.
Q. Suppose both vessels had kept their course, how would you have gone?
A. If she had gone on her course, and I had kept on mine, we would not have been within 300 feet of her.
Q. How would you have passed her?
A. On the New York side.
Q. Now at that time, where were you standing?
A. On the forward bridge.
Q. Did you notice, in reference to Diamond Reef, where she was at that time; whether she passed Diamond Reef?
162 A. I took her to be to the southward of Diamond Reef.
Q. What was the next thing you observed?
A. I saw her come across our bow.
Q. Did you see her make that shear?
A. Not until she got round.
Q. When you saw her making that sheer, where was the steamer?
A. The Othello was about Wall Street Ferry.
Q. Had she given you any signal up to that time?
A. Not that I heard.
Q. If she had given signals, you would have been likely to hear them?
A. If she had signalled, I should have heard it at that time.
Q. When she changed her course, what was done on the steamer?
A. The engines were put back at full speed; there was Diamond Reef on the starboard and Coenties Reef on the port, and the canal boats on the other side.
Q. There was no way to clear?
A. Only to back.
Q. Was there an instant lost?
A. No, sir.
Q. Was there anything done as to the Starbuck?

A. The captain gave orders to the Starbuck to help us back.

Q. So you had your own power and the Starbuck's power to back with?

A. Yes, sir.

Q. And when did you stop backing?

A. Stopped backing——

Q. (Interrupting.) How far did you go up the river before you stopped backing?

A. I backed away out into Martin's stores, to let the canal boats swing round, so that I could go out to the southward.

Q. As you observed the Connecticut crossing your bows, how was the tow? did you see her tow?

A. I saw the tow after she crossed our bow.

Q. Swinging off?

163 A. Swinging round behind us; when I made the Connecticut first, I did not see any tow.

Q. At the time of the actual collision, how was it about the steamer's having headway on?

A. I should think our headway was stopped, otherwise it would have gone through the whole tier.

Q. Now, how fast should you think, Mr. pilot, that that tow was drifting up the river at the time she came in contact with your stem?

Answer. Well, the tide was not running very strong; it was only about an hour's flood; I should suppose she was going a quarter or half a mile an hour.

Q. They were swinging up at that rate?

A. Yes, sir.

Q. When you saw the Connecticut was she going ahead?

A. Yes, sir; she was going across my bow.

Q. How fast do you think she was moving?

A. I couldn't say.

Q. Describe her course from the time that you first observed her change up to the time of the collision.

A. When I first saw her, she was heading about east-northeast, and she changed her course, and kept changing her course until she got heading about north-northwest.

Q. That brought her down to the New York shore?

A. Yes, sir.

Q. Did she stop at any time?

A. She was stopped when we hit.

Q. Then her headway was stopped?

A. The engines were stopped; I couldn't say what the Stevens was doing.

Q. How near the New York shore do you think her stem was?

A. About 300 feet.

Q. What is your idea about the distance that that Coenties Reef is off the end of the pier?

A. About 450 feet.

Q. Is there any way for those large steamers to go down between Coenties Reef and the shore?

164 A. They get off not very large; at Whitehall there are mud flats.

Q. Is there any way to take a steamer out safely, except between those two reefs?

A. They might go down by the Atlantic docks.

Q. Along the shore all the way, and go down Buttermilk Channel?

A. Yes, sir.
Q. Where is Buttermilk Channel?
A. Between Governor's Island and the Atlantic docks.
Q. Where is the channel in Buttermilk Channel?
A. You can call it the channel after you get down to the Atlantic docks.
Q. Now, at any time, did you get any signal from the Connecticut?
A. No, sir.
Q. Did you hear any whistle from her at all?
A. No, sir.
Q. Did you observe by the land at the time that your steamer was going ahead?
A. I didn't take notice.
Q. Was there anything that prevented this steamboat from keeping up to your left?
A. No, sir; she could have gone up to Harlem.
Q. Was there any necessity of either of you going that way in order to clear each other?
A. I didn't have to change my course, and I know I couldn't touch her the way she was heading.
Q. Had you any idea at that time that she was going into piers 7 or 8?
A. No, sir.

Cross-examined:

Q. Have you been in the habit of taking steamers out of the dock in piers 44 and 45?
A. No, sir; I never took one there before her; not out of 44.
Q. Did you ever take other steamers of this line from pier 44?
A. No, sir.
Q. Can a steamer be taken out of that dock when the tide is running flood?
165 A. If it is not running too strong.
Q. If it is not running too strong?
A. At the time we took that steamer out we could take her out.
Q. Was not the reason why you took her out because it was slack water?
A. No, sir.
Q. Will you undertake to say that the taking of that steamer out was not delayed on that morning until the tide was slack?
A. No, sir.
Q. What do you mean; that you will not undertake to say, or that it was not?
A. The steamer was delayed; she had had her rail jammed and could not get the hatches down, and I was to be there at 4 o'clock to take her out, and then the passengers were not there.
Q. Well, there was a delay until 5 o'clock?
A. Yes, sir.
Q. Then you say that at the time she was taken out it was some time after the flood had commenced?
A. Yes, sir.
Q. And at that time it was not slack water?
A. No, sir; the tide was running up; I came there at 4 o'clock to take her out at high water.
Q. And she was not taken out at that time, because she could not be?
A. Yes, sir.

Q. The passengers was not there and there was that delay?
A. Yes, sir.
Q. Now, after she was taken out in the stream stern foremost, then her bow was brought head down the river by the Starbuck?
A. Yes, sir; when we backed her out the stern was swinging partly up the river, and let go the Starbuck from the quarter and she pulled down the bow off the dock.
Q. How long did the Starbuck remain fast to her?
A. I couldn't exactly say; not many minutes.
Q. Did she leave as soon as the stem had been pulled down the river?
A. As soon as I got it straightened out and got the ship moving
166 ahead so that she would mind her helm, I let go the Starbuck to take the lady's baggage ashore that could not get aboard.
Q. Off what point was the steamship when the Starbuck came alongside to take the baggage aboard from the ship?
A. Up above Fulton Ferry, or about Fulton Ferry.

By the COURT:

Q. On the Brooklyn side?
A. No, sir; New York side.
Q. From that time that the Starbuck came on the quarter to take the baggage from the ship, can you tell me what the crew were doing on board that vessel?
A. On board the steamer?
Q. Yes.
A. No, sir.
Q. Didn't you know that one watch was aft transferring the baggage from the saloon to this vessel?
A. I don't know what the crew was doing.
Q. You don't know what any part of the crew were doing?
A. No, sir; only the two men that were at the wheel.
Q. Well, then, you don't know whether part of the crew were engaged in transferring the baggage?
A. No, sir.
Q. Do you know whether the other part of the crew were engaged in hauling the hawsers forward and storing them away?
A. Yes, sir.
Q. Do you know whether any lookouts were stationed on the forward, any men put on the port and starboard bow.
A. No, sir; there was men forward; I don't know whether they were looking out or not.
Q. You don't know what they were doing?
A. No, sir.
Q. Were you the lookout?
A. Yes, sir.
Q. And also the pilot?
A. Yes, sir.
Q. Now, off what point were you when you first saw the Connecticut?
167 A. About at Fulton Ferry.
Q. And at that time you say the Connecticut was on the course up the river off your port?
A. Yes, sir; heading to E. N. E.
Q. About that time you did not know she had any tow?
A. No, sir.
Q. And you did not see any boats?

A. No, sir; not until she turned to cross my bow.
Q. How far was she below you when you first saw the tow?
A. Somewhere about the Diamond Reef; she was southward of the reef; I know that by the way I was coming down.
Q. Was that a distance off, or about a mile; I mean when you first saw her, how far apart were they?
A. The Othello was at Fulton Ferry and she was at the reef.
Q. What is the distance between the reef and Fulton Ferry?
A. About a mile.
Q. All of a mile?
A. Well, sir, I guess it is; I couldn't say how far.
Q. How long after that was it before you discovered the Connecticut was standing over to the New York shore?
A. About abreast of Wall Street Ferry when I discovered it.
Q. That was the first you discovered?
A. Yes, sir.
Q. How close were you going then?
A. Four or five hundred feet or more; I don't know exactly how far it is.
A. About four or five hundred feet?
A. More than that.
Q. How much?
A. Wall Street Ferry is more than 500 feet from Coenties Reef.
168 Q. The question is, how far below you was the Connecticut when you saw her standing across into the New York shore?
A. She turned right round.
Q. (Interrupting.) I didn't ask you that. How far was she below you?
A. I should judge she was about four or five hundred feet.
Q. Well then did you see the whole tow?
A. I saw she had a tow; I couldn't tell whether it was the whole or not; I saw the tow swinging out with the flood tide.
Q. How many boats?
A. I don't know; I couldn't tell how many she had.
Q. How many bridges are there upon that boat?
A. Which boat?
Q. On the Othello—the steamship.
A. There is one bridge forward and one bridge on the poop.
Q. Isn't the after bridge on an extension of the saloon deck, which is amidships?
A. I don't know whether she had an after bridge or not.
Q. Do you know whether she had more than one bridge?
A. No, sir; I know she had one bridge, and that was forward on the forward house.
Q. Is the telegraph on that bridge?
A. The telegraph is on the house on the wheel.
Q. There were no telegraph on the bridge on which you were?
A. No, sir.
Q. When did you go up on that bridge?
A. I went up when we were leaving the dock.
Q. How long did you remain there?
A. I remained there until we got to Sandy Hook.
Q. Is there a rail on that bridge?
A. Yes, sir.
Q. There is a rail?

A. Yes, sir; as far as I can remember. When I go on board a vessel I do not take particular notice what they have got.

169 Q. Is there a turtle-back forward on that boat; a curved deck forward?

A. I don't know whether there is or not.

Q. And so far as you know, you were the only person looking out on that ship?

A. As far as I know; yes.

Q. Did you see the Connecticut before your attention was called to it by the captain?

A. Yes, sir.

Q. How long before?

A. A minute before.

Q. You think you had seen it before Captain Rogers?

A. I seen it before Captain Rogers called my attention to it.

Q. How long before?

A. Two or three minutes; couldn't see any great distance anyway.

Q. What was the difficulty?

A. Hazy.

Q. Was it so hazy that you couldn't see things on the water at a distance of a mile or two miles?

A. You could see the steamboat.

Q. But you couldn't see the canal boats?

A. No, sir; I didn't; not until she turned to go across the river.

Q. How high was the stem of that boat?

A. I don't know.

Q. Could you remember whether the boat was down by the stern and the stem up?

A. Well, all boats rise forward and aft as a general thing.

Q. Do you know whether that ship doesn't sail well down by the stern?

A. I don't.

Q. What was there to divert your attention after you first saw the Connecticut? What were you doing?

A. I was looking round to see if everything was out of the way.

Q. Did you notice whether the course toward the Brooklyn side was entirely clear?

A. I took no notice of the Brooklyn side, because I couldn't go there.

170 Q. What is the usual course in passing down from off the Fulton Ferry through the two reefs—the Coenties Reef and the other reef?

A. The course down the East River is about W. SW., and when you come down to below Coenties Reef, or betwixt the two reefs, it is about W. NW.

Q. You did not hear any signals from any steamboat?

A. No, sir.

Q. You did not answer, of course, any?

A. No, sir.

Q. And did not make any signals?

A. No, sir.

Q. And you did not notice when the Connecticut began to change?

A. I did not. She had fallen off three or four points before I took any notice of her.

Q. After seeing her, how far over, which side, to the northward or to

the southward of the buoy or Diamond Reef, was she, so far as you observed, when you first saw her?

A. She was northward of Diamond Reef.

Q. When you first saw her?

A. No.

Q. The Coenties Reef is nearer to the North Pole than the Diamond Reef?

A. Yes, sir.

Q. And the Diamond Reef is further to the south and to the west than Coenties Reef?

A. Yes, sir.

Q. And the course that you intended to make, was, how near to Coenties Reef?

A. The Connecticut must have been to the southward of Diamond Reef, because I was going down along the edge of Coenties Reef to get out between the two reefs, and then she was about point or half a point on our port bow.

Q. How near did you intend to make a course to the Coenties Reef?

A. I intended to go down—I was going down to shave Coenties Reef to the southward.

Q. So far as you know, you were the only person on the lookout on that ship?

A. So far as I know, there was the captain looking out. There was the port captain looking out. I said they were all looking out.

171 As for them, I don't know anything about them. I know I was looking out.

Q. They were aft you on the bridge, or deck?

A. They were on the part of the house by the wheel and the telegraph.

Q. Where you were there were no telegraph signals either to the engine room or to the wheel?

A. No telegraph where I stood. The captain stood by the telegraph and obeyed the orders I gave.

Q. Did you hear any orders given to back on the Othello?

A. I gave the order to back on the Othello, and the captain rang the bell; I heard the bell; I did not hear any order given, because they rang the bell.

Q. How did you give the order?

A. As soon as I saw the object across my bow, I told the captain to stop the boat and back full speed.

Q Then the order was given by you, by word of mouth, to the captain?

A. Yes, sir.

Q. Then the captain signalled it, probably?

A. He was standing with the telegraph in his hand.

Q. How did the Connecticut bear from you when you gave that order?

A. Southwest, right ahead of us.

Q. By the COURT. Dead ahead of you?

A. Yes, sir; going right across my bow.

Q. Were any orders given to back the Othello before they were given by you?

A. No, sir; not to my knowledge.

Q. Was there any backing on the Connecticut—I mean the Othello—before you gave the order?

A. No, sir; I don't think there was.

Q. Were any orders given to back the Starbuck?

A. The captain told me that he had given orders to back the Starbuck after the collision.

Q. You didn't learn anything about it at the time?

A. No, sir; I was not aft there.

172 Q. You gave the order to the captain to back the Othello?

A. Yes, sir.

Q. You did not give the order to back the Starbuck?

A. No, sir.

Q. Whatever order was given to back the Starbuck was given by somebody else, and not given by you?

A. Captain Rogers told me he gave it.

Q. Then you don't know which order was given first, the order to back the Othello, or the order to back the Starbuck, if there was any such order given?

A. I know there was an order given to back the Othello before there was any other orders given.

Q. You don't know whether there was any order given to back the Starbuck; that is, from any knowledge that you had at the time?

A. No, sir; I would have to be at both ends of the ship to find out.

Q. What do you think was the rate of speed of the Othello?

A. When she hit the boat?

Q. Well, from the time that she started off Fulton Ferry slip.

A. I don't think she went over two miles an hour from the time she started until she was stopped.

Q. Do you mean two miles through the water, or two miles over the land?

A. Two miles through the water

Q. That is your estimate; it was not over that?

A. Yes, sir; she might be going more and she might be going less.

Q. Did you observe the strength of the tide there at that time?

A. Yes, sir.

Q. What did you observe it to be?

A. Where?

Q. Well, at the time you were going down.

A. I observed it by the canal boats swinging.

Q. That was the only observation, was it, that you made of the strength of the tide?

A. By what was passing, is the way I observe the strength of the tide; I couldn't tell it by looking at the water.

173 Q. How do you tell at any time?

A. You must have some place where the tide is running against.

Q. Did you see any such places at that time?

A. I saw the canal boats swinging.

Q. Then the only means you have of forming a judgment as to how fast the tide was running up was from the swinging of the canal boats?

A. Yes, sir.

Q. Do you know whether the signal to back on the Othello was obeyed?

A. Yes, sir.

Q. How do you know that?

A. I couldn't tell any more; I was not in the engine room; I only know the vessel was losing all her way.

Q. You did see the wheel turn?

A. No, sir; I was not looking over the stern. I was forward looking over the bow.

Q. Did you notice that there was any sensible diminution of the speed of the Othello before she hit?

A. Yes, sir; the Othello was stopped almost when she hit, if not altogether.

Q. In what distance can that Othello be stopped when going at the rate of speed at which she was going then?

A. Quarter of a mile.

Q. You think it would take a quarter of a mile to bring her to a stop?

A. If she is going at full speed it will.

Q. So at half speed?

A. I could not tell you exactly how far it would take to stop her.

Q. Could you form any judgment about that, how much space she would want to stop her headway? And can you form any judgment as to how much space she would want to stop her headway at any given rate of speed?

A. No, sir.

By Mr. OWEN:

Q. After the Starbuck cast off, did she have anything to do with towing the steamer?

A. No, sir.

174 Redirect:

Q. Was there any order, after you straightened down the river, to change the course?

A. No, sir; I kept her right down, right down.

Q. When you saw this boat change her course, was that a rapid change?

A. It was so rapid that she fell off three or four points.

Q. Was your eye fastened on her?

A. No, sir; not on the Connecticut. I was looking out on the East River.

Q. And the first you knew, she went across your bow?

A. Yes, sir.

Mr. Beebe read deposition of JAMES MILLS, taken de bene esse on behalf of claimants of the Othello, as follows:

I hail from London, England; I am master mariner by profession; have followed the water about thirty years. I am now attached to the steamship Hindoo, of the Wilson line, running between New York and Hull. I have been connected with steamers about 4 years; before that in sailing vessels. I know the steamship Othello; she belongs to the same line that my ship belongs.

On the morning of the 18th of August, 1875, I was on the Othello—I slept on board the night before; she was lying at pier 44, East River. At that time I was out here representing the line. The Othello that morning was bound to Hull via Southhampton. The Othello is about 2,800 tons—she is 327 feet long over all.

On that morning the Othello was lying on the easterly or upper side of the pier, stem toward the bulkhead, and stern out in the stream.

I came up from below just as she commenced to move, about 5¼ o'clock a. m.—I am not sure. Our starting time was 5 o'clock, but we were delayed that morning. When I came up she had either started or did start immediately to back out. When I came up I stood on deck a

little while, and then I went up on the bridge; I might have gone straight up on the bridge; I am not certain.

175 The steam-tug Starbuck was attending the ship Othello; our engines were working, and I am not certain whether the Starbuck had hold of us by the stern to help us out, or whether she took hold of us by the stem after we got out, to pull us around to straighten us down. It was a misty sort of a morning—the tide was running flood; we waited till it run flood.

In going out we were going between Governor's Island and the Battery. When the steamer got straightened down, which was shortly after leaving pier 44, we were about the middle of the river.

I left the bridge after I went on it, as I have stated, and before the collision.

At the time I left the bridge we had sent the Starbuck off, and called her alongside on the starboard quarter to take on board some passenger's luggage.

We had a collision that morning, soon after my leaving the bridge, with a canal boat.

Before leaving the bridge I had seen the tow in which the canal boat was, and in which we afterwards came in collision.

There was a steamer towing the canal boats, and I understood afterwards it was the Connecticut.

When I first saw them there the steamer and the tow were on our port bow.

The steamer and the tow seemed to be heading up the river on a course parallel with us in our course running down.

Q. Supposing the Connecticut, with her tow, and your steamship had kept on their respective courses on which they were when you noticed the Connecticut, how would they have passed?

A. We would have passed clear, and we should have passed on the port side; there is no doubt about that at all.

The courses continued the same up to the time I left the bridge. We had a Sandy Hook pilot on board, and he was on the lookout

176 bridge. The captain of Othello had been on the bridge on which I was on, for some time before I left it. The bridge I was on is about 60 feet from the stem. The bridge is about 6½ to 7 feet above the deck, and from that position I had a full view all around.

When I left the bridge, I went aft on to the starboard quarter for the Starbuck to come alongside, to settle with him, and to get the luggage. She came alongside while I was there. She made fast with a bowline, and while I was standing there, the captain of the Starbuck called my attention to the Connecticut shoving her (Connecticut's) bow across our starboard bow. After leaving the pier our steamer had been running very slow. At this time, I should think, the Connecticut was a ship and a half length ahead of us. I could not form a correct idea of her; she had got far enough across our bow so I could see her wheels; she was heading in then towards the New York shore, and moving ahead, though her paddles were stopped. At this time, I had heard no whistle from either vessel.

On seeing this state of things, I told captain of Starbuck to go astern; by that I mean, back. I went on the bridge then as fast as I could—the same bridge I had left. When I got on the bridge I found our vessel going astern; the order had been given by telegraph. The tide was against us when I got on the bridge; I sung out to go astern as hard as he could to the Starbuck; I was in such a situation on the

bridge that I could see the steamboat and the tow. The Connecticut was ahead of the tow, towing by a hawser.

When I got on the bridge the Connecticut was heading in towards New York, and the tow behind was forming a sort of circle, the tide then swinging them up.

Our helm was put to starboard then, about that time; I did not see exactly how many tiers there were in that tow, but there were a good many. There were four abreast.

177 I noticed the Connecticut wheel after I first saw that it was stopped. After I noticed that it had stopped, I saw it going ahead again. At that time I was on the bridge.

Our steamer came in contact with the boat on the upper side—in the second tier, I think; but I am not certain whether first or second tier. I mean, by the upper tier, the one on the starboard side.

I could see the boat in this tow, that we came in contact with, before I left the bridge; as soon as I saw we were drawing very close together I ran to the stem, and looked right down on the boats.

We came in contact about midships of the canal boat.

At the time we came in contact, I don't believe our steamer was moving by the land at all; I don't think she was altering her position by the land.

I should think the boats were swinging on to us at the rate of ten knots an hour, perhaps a little more; at this time, the boats were lying broadside with the tide, and we came together at nearly right angles.

The boats were being towed by a pretty long hawser; but I could not say exactly how long.

I afterwards noticed a steamboat with the Connecticut, but not at the time of the collision.

I sent the Starbuck away from the ship, to see if he could render any assistance.

I did not hear anything said by the pilot of the Connecticut.

The boat we came in contact with sunk.

We finally left the Connecticut on the New York side; we had, before starting ahead, drifted some way up the river.

I am not familiar enough with localities there to fix abreast at what point this collision took place.

I should think it would not take me more than twenty-five or thirty seconds to go from the starboard quarter, where I was upon the bridge where I went; I should say the distance was 120 or 130 feet. I went pretty quick; I don't recollect whether I went on the run.

178 I expect to sail Tuesday. On our starboard wheel I think our head had changed a little to port before the collision.

Mr. C. Van Santvoord reads the examination of JAMES MILLS, on behalf of Connecticut and Stevens, as follows:

Cross-examined by counsel for Connecticut and Stevens:

I was in the employment of the company who owned Othello before she started from the slip on the 18th of August, and had been for four years. For four months I had been port captain or superintendent in New York; my business as port captain was on shore, looking after the vessels here.

I have been frequently down at the wharves when the vessels started out for a voyage. The time of these vessels starting out is dependent on the state of the tide. The time we select for going out is slack water—both high and low water slack. It does not depend on the state

of the water at Sandy Hook. If we don't get down there in time we anchor and wait.

The time for going out is not regulated by the state of the water at the bar or Sandy Hook for the East River.

At the time the Othello went out it was low water slack.

Q. Would it be safe for one of these steamers to go out from the wharf with the tide running strong ebb or flood?

(Objected to by Judge Beebe as irrelevant.)

A. I think it would be dangerous for one of the steamers to go out when the tide was running full strength.

It was the practice of the line to go out at slackwater.

It was low water slack at the time the Othello started out.

179 When I came out on deck that morning all the lines of the Othello were cast off except one.

The haze I have mentioned that morning was such that you could see a good distance. It would be a hard thing to say how thick it was. Was not so thick so as to obscure the vision of vessels or objects on the river.

I had nothing particular to do with the transfer of the luggage from the Starbuck to the steamer further than the interest I had in the company.

The baggage was not all transferred to the Starbuck when the captain called my attention to the Connecticut. The bulk of the luggage was on board of the ship.

The baggage was on the deck, not in the hold, somewhere near to where the Starbuck came alongside.

It might have been that a package or so was being hauled up from below when the Starbuck was coming to the quarter. The baggage came from the saloon. When the captain of the Starbuck called my attention to the Connecticut she was heading in to the New York shore. We were heading outside of the dredging or drilling machine.

After backing off, the Othello drifted a considerable distance up the river, pretty close up to the bridge piers, before we got away again. We had to wait till everything was cleared; the river was blocked up.

The effect of this collision was to break this tow up.

After the collision I know that the Connecticut, when we passed down—I cannot fix her exact locality, but I know she was on our starboard side, and she came steaming out as we passed.

The Othello did not come to anchor before passing the bar.

Q. Before the captain of the Starbuck called your attention to the Connecticut, while you were on the starboard quarter, had you

180 heard any signals by the steam whistle of the Othello?

A. No.

Q. When the captain of the Starbuck called your attention to the Connecticut on your starboard quarter, did you go immediately to the bridge?

A. Yes, sir; to the second bridge from the stern.

I saw the Connecticut and her tow when I reached the bridge, and the Connecticut was heading towards the New York side, and the tow was sweeping around in sort of a part of a circle.

The Connecticut and tow was something less than a ship's length off. I stopped on the bridge and told the captains of Othello and Starbuck to go astern as fast as they could. I stopped there till we drew nearer together, and then started for the stem. When I reached the stem, if the vessels were not in collision, they were very close to it.

The Othello was heading pretty straight down the river just before I

left the bridge to go to the stem. I could not give a positive answer as to whether she was heading into the shore or not.

The signals given on the Othello are given by telegraph communication from the second bridge.

The signal was given to reverse the engines before I went on to the bridge the second time. I know this from seeing the telegraph, and being told that it had been given. How long before I am not able to state.

The order given to back was "full speed to stern," if I recollect aright. I could not tell whether the propeller was backing or not, nor could I see it from there.

My estimate of the width of the river I have never taken into consideration.

I saw the drilling machine before. I can't say how near she is to the New York shore, as I never gave it thought.

I never made any written note of the time the Othello left the wharf. I don't recollect now of looking at my watch or any time-piece.

I did not see the Connecticut before I went on the bridge the first time, and it was some time after I went on the bridge that I saw her.

181 When I first saw the Connecticut the Othello was steaming down the river very slowly; can't say where the Othello was, as to locality.

At the time I left the bridge to go to the starboard quarter of the Othello, I had no idea of a collision then.

Before I left the bridge I looked all around to see what there was around, and how our own vessel was going.

I went to England in the Othello once. The Othello going at full speed would require 4 or 5 minutes to stop her; it would depend upon her rate of speed. To stop her and way astern would take 4 or 5 minutes, but to stop her only would not take more than 2 or 3 minutes.

I cannot give the distance it would require to stop her in the water at any rate of speed; I could not give that. She is a good sailing vessel, and minds her helm well.

Mr. Owen reads the examination of James Mills on behalf of the Starbuck, as follows:

Cross-examined by Mr. OWEN:

Q. At the time you sent the Starbuck away, and to come around and get the baggage, how far away was the Connecticut and her tow?

A. She was a good long way off, but could not tell the distance.

When we sent the Starbuck away she had finished assisting us. She only had a bow-line when she came to our starboard quarter for the luggage.

I can't say whether the Starbuck's propeller was moving or not when I went on the starboard quarter, and while she was lying there.

This baggage transferred to the Starbuck belonged to a passenger who had been left.

J. W. MILLS.

Subscribed and sworn to before me this 8th day of January, A. D. 1876.

JOHN A. OSBORN,
U. S. Commissioner.

182 Mr. Beebe reads deposition of James T. Rogers, taken de bene esse, on behalf of claimants of the Othello, as follows:

I am master mariner. I hail from London, England. I have followed

the water about twenty-two years. Have been master mariner since 1866. I have been connected with steamships since 1870. I have been twice in command since that time of steamships. I am now attached to the steamer Navarino, and expect to sail next Saturday week.

I know the steamship Othello. I was in command of her as master from March to December, 1875, until I took command of the Navarino, 1875.

She was running on the Wilson Line while I was in command of her, between New York, Hull, and Southampton.

I was on board of her on the 18th of August last; she was lying on the morning of that day at pier 44, East River. That was her sailing day for Hull. She lay on the starboard side of the pier, on the easterly side of the pier, stern out. At 5 o'clock in the morning she dropped off her ropes to start on her trip.

Adjourned to Wednesday, January 26th, 1876, at 3 p. m.

FRIDAY, *January 28th*, 1876.

Parties present.

JAMES T. ROGERS continues:

When the ship started to back out I was standing on the middle bridge. The third officer was with me. I did not leave the bridge from that time until a few minutes before the collision, when I walked forward and I saw the steamtug N. B. Starbuck.

When we backed out we backed out by our own steam, and was helped by her at the same time.

183 The hawser which the Starbuck used was our hawser, and fastened to our stern. The Othello is 317 feet. We did not stop backing till we got to the middle of the river. After we backed out the Starbuck went to our bow, made fast there, and hauled our bow around so that we were heading down the river.

When we got headed straight down the river the Othello was about the middle of the river. The weather was hazy; could see objects at some distance—quite a mile off—could see the shores plainly. The tide was flood when we got straightened down. We used our own steam going ahead when we got straightened down. As soon as the Othello got straightened down the Starbuck let go of us, which was at 5.25, and we were going slow ahead. After the Starbuck left our bow we hailed her, and she came alongside, on starboard side, to take some luggage on board. When the Starbuck left our bow to go around, Capt. Mills, who had been on the bridge, left to go to the side of the steamer where the Starbuck was coming to; we were going slow at the time. I am not sufficiently acquainted with the river to say what point or place we were opposite when the Starbuck let go to come around.

At about the time the Starbuck left us we sighted the Connecticut, with her tow; I made her off our port bow. When I first made her I should think she was about one mile off.

When I first saw the Connecticut she was coming parallel with the Brooklyn shore, and also parallel with our steamer.

If both had kept on the courses they were going when I first saw the Connecticut, they would have passed on the port side, and nowhere near to each other. She had a very large tow. I should think she had 60 or 70 boats altogether.

184 The Connecticut, almost immediately after I first saw her, made a change in her course. I saw her in the act of making the change. At that time the flood tide was increasing in strength; the change

she made was across our bows, towards the New York shore; upon seeing that change we immediately telegraphed to stop our engines, and go full speed astern, and ordered the wheel hard a-starboard. These orders were obeyed at once. The effect of the change of the Connecticut across our bows was to sweep the tow up and across our bows. I should think the Connecticut was towing with a hawser of about 80 fathoms. When the Connecticut got across our bow she stopped her wheels, and she was about our ship's length off when she stopped her wheels.

While the Connecticut was stopping the tow was swinging around up towards us. The Connecticut did not go ahead again until after the collision. She had headway on until the length of her hawser was overcome. We came in contact with the first tier of the boats, to which was attached the hawser. I was at the stem of our boat at the time of the collision. At that time our headway by the land was stopped. We came in contact with the first boat on the starboard side. I think the tide was swinging them up at three miles an hour. We came in contact with the after part of the boat, knocking the top off of the house.

I saw the Starbuck come alongside on our starboard side for the luggage. I saw her from the bridge. I gave the Starbuck orders to go full speed astern when we thought there was danger of collision.

After the collision the Starbuck went up to the Connecticut and the tow, to see if she could render any assistance. I could hear no orders on the Connecticut.

When the Othello stopped backing we had got up close to the bridge pier. We had been backing for twelve or fourteen minutes.

Before or at the time of making her change to cross our bow, the Connecticut gave us no signal.

185 We were about the middle of the river at the time of the collision; we were somewhat nearer the New York shore at the time of the collision than when we started.

When we saw the Connecticut starting to cross our bow the starboarding of our wheel did not have very little, if any, effect upon our course; we had a pilot on board; he was on the forebridge; the Othello was not injured any by the collission; at the time the canal boats drifted up to us the headway of the Connecticut was about stopped; we did not anchor at all; we passed on the east side of Coenties Reef, between Governor's Island and the Battery; as we passed down we left the Connecticut on our starboard hand; I saw another steamer alongside of the Connecticut, on her starboard side.

Mr. C. Van Santvoord reads the examination of JAMES L. ROGERS, on behalf of Connecticut and Stevens, as follows:

Examined by Mr. VAN SANTVORD:

When we backed out the tide was low-water, slack; I was on the bridge when the lines were cast off, and was there all the time going out; the height of the side of the Othello from the water to the gunwale was eight feet, and where I was standing, on the saloon deck, was about eighteen feet from the water; the bridge I was standing on was about seventy feet from the stern; there was one bridge between me and the stern, and this bridge was thirty feet from the stern; some of the crew were engaged in passing up luggage; one watch was doing this and the other watch attending the hawser and standing by the anchor; seven men in a watch; they were passing luggage out of the lower saloon into the Starbuck; the hawser which they were attending was the hawser

which had been attached to the Starbuck, hauling it in through
186 the chock on the gunwale; after the Starbuck left it was five minutes before the hawser was hauled in, and after it was hauled in it was coiled up; one watch was forward and the other attending to this baggage.

Q. Were any lookouts stationed forward as the Othello was going down from her pier?

A. The chief mate and boatswain were forward; the mate's name is Frederick Kershaw, the boatswain's name is Robert Haines; they were forward in the bows, close to the stem; they were looking out and superintending the hauling in of the hawser; when it is necessary to set lookouts we set two men; going down the river the mate and boatswain are always forward to look out and attend to anchors, &c.; my attention was called to the Connecticut by simply seeing her coming up the river in an opposite direction to us; we were coming opposite to the stone piers of the bridge when I first saw the Connecticut, and soon after that I first saw her changing her course; the Othello had passed the bridge about half a mile when we saw the Connecticut change her course, and we commenced to back; I don't know the Fulton Ferry slip on the Brooklyn side very well; I heard no signals from the Connecticut; the pilot and myself saw the Connecticut at the same time; so far as I know, no one saw her before I did; I heard nothing from our boatswain or chief mate before I saw her; I gave the order to the Starbuck to back astern; the Othello had commenced to back at the same time I gave orders to the Starbuck, which was alongside; at this time the baggage had been commenced to be passed but was not completed; the Starbuck was tied to steamer by rope—to the bows; no line from aft of the Starbuck to the Othello that I know of; the Starbuck had no other rope but the bow rope from her bow to us while she was on our quarter, to my knowledge; the Othello was above the bridge when the Starbuck left
our stern, and when she started the Othello was about the middle
187 of the river, but was nearer New York shore at the time of collision than the Brooklyn shore. She was nearer the New York shore than when the Starbuck left our stern. The Othello had a steam whistle; did not use it on this occasion; she uses it in thick weather, and uses it for the purpose of signal when necessary; this whistle is used as an alarm in thick weather. I heard no signals from the Connecticut. The Othello was going about three miles an hour by the land and four miles through the water. I don't know as a fact, but my judgment is that the tide was about two or three miles an hour. I did not make an observation, but merely noticed the tide running up. When the Othello is at full speed, she goes 9 knots an hour. I observed the rate of speed going down the river dead slow all the time; and when going dead slow she can stop her way in the water in twice her own length, and at twice her own length and a half she would have stern way. When going at full speed, it would take from three to five minutes to stop her, and at half speed about two minutes. She stops inside five minutes going full speed. She minds her helm well and steers well. She would turn around in a length and a half.

The name of the pilot was Thomas Murray—Sandy Hook pilot. I saw Capt. Mills on board when the Othello started. He was on the bridge, and when the Starbuck cast off he went forward, and was a that place when the steamboat came alongside.

I had sighted the Connecticut before Captain Mills went aft, and saw the change of the Connecticut right after Captain Mills had left to go aft. The change of Connecticut was to turn to cross the river, and

she was about three-fourths of a mile off, and we were three-fourths of a mile off when we began to stop. The orders to stop were given by telegraph, and they were obeyed at once. The machinery was in good working order.

188 Mr. Beebe reads the redirect-examination of JAMES L. ROGERS on behalf of Othello, as follows:

Redirect:

When I saw the Connecticut coming to make a change, I at once telegraphed the orders to stop and back, and gave the orders to hard a-starboard. The orders were all obeyed.

From the time we had got straightened down the river up to the time I gave the order to hard a starboard I had given no orders as to change of course. Captain Mills came back before the collision took place, and went forward to the stem, and at the time of the collision was standing there, five or six feet from me. I think Captain Mills and I went forward together.

Recross:

It was two or three minutes from the time I started to go forward before the collision.

Q. When you went forward, did you find the boatswain and chief mate there?

A. Yes, sir; there was no change of the persons there.

J. W. ROGERS.

Subscribed and sworn before me this 21st day of January, A. D. 1876.

JOHN A. OSBORN,
U. S. Com.

Mr. Beebe reads deposition of JAMES NIBBS, taken de bene esse, on behalf of claimants of the Othello, as follows:

I was born in Gosport, England. My business is engineer. I follow the water as an engineer at present. I have followed the water since 1864. I am attached to the steamship Othello, and was on the 18th of August last. On the morning of that day she was in the port of New York—East River—bound to Hull, via Southampton. I was in charge of the engine on that morning.

189 I don't remember whether we lay stem out or stern out; I think we were towed out by a tug; we got steam on that morning at 5 o'clock a. m.; ten minutes after we commenced moving the machinery; after we got under way I received a signal to stop and back full speed; at this time the vessel was running half speed—4 knots speed; she had been so running (half speed) for 12 minutes, when I got the signal to stop and back full speed; I was standing at the turning wheel right flanking the engine when the signal came, and it was immediately obeyed; I continued to back for ten minutes before I received the signal to stop backing; the Othello is a propellor; her engine-room is between the main and mizzen mast, and on the lower deck; the signals are communicated to the engine-room by a gong and a dial; the signals to stop and back, at full speed, would be one stroke gong, and the indicator full speed back; I received three signals that morning; I had to shut the steam off and reverse the engine to execute the signal; after reversing of course I let the steam on again; to shut off the steam, reverse the engine, and open steam on again, takes just 12 seconds.

I expect to sail to-morrow; I was not on deck at all.

After backing we started ahead at six o'clock, and discharged our pilot at 9.15 o'clock a. m. to let the pilot off; we stopped the machinery.

Mr. C. Van Santvoord reads the examination of JAMES NIBBS on behalf of Connecticut and Stevens, as follows:

Examined by Mr. C. SANTVOORD:

I had been engineer of the Othello for 9 months up to August, 1875.

I have been testifying with a book before me; it is engineer's log book, kept by myself; I made the entries in it at noon of the same day;

I made the entries from a log slate kept in the engine room; the
190 entries on the slate were made by the 2nd engineer; his name was Fairfoul; he is in Hull at present. From where I was in the engine-room I could not see out on the river.

I cannot say where I was on the river when the signals came to back full speed. I believe we had cleared the slip and got out into the river when the signal came to back; I know this by the distance the engine moved.

The first signal I got was to go easy ahead, and then half speed ahead, then stop full speed astern.

These signals from "easy ahead" to the signal "half speed" was twelve minutes interval between "half speed" and "stop full speed astern" was seven minutes; between "stop and full speed astern" was 12 seconds; we would be going at between 3 and 4 knots on easy ahead, and at half speed 4 knots.

There was no signal between "half speed ahead" and "stop full speed astern."

The signals I have given are all the signals received for the starting out from the slip. I don't know how far out we were when I got the signal "easy ahead."

Mr. Wing reads the examination of JAMES NIBBS on behalf of libellants, as follows:

Examined by Mr. WING:

At this time all the engineers were in the room—Mr. Fairfoul, Mr. Dymock, and Mr. Scott. I was the chief engineer; I was in the engine-room all the time, &c., from the time the Othello left the dock, attending to the engine, and the other men were assisting. I was personally working the engine. It is not the duty of second engineer to always work the engine. I keep the engineer log personally; the entries are in my handwriting; they are made at noon every day; they are entered on the slate at the time of occurrence by the second engineer; the second engineer enters them on the slate of his accord,
191 and these entries in the book are the entries originally of the second engineer. The power of the Othello is 300 nominal; she makes on an average of 48 revolutions, at full speed, per minute.

Going at half speed I cannot tell how many revolutions of the Othello's engine it would require to get stern way on. I saw the N. B. Starbuck alongside our vessel before we left the dock, but I don't know whether she assisted us out or not; we always have a tug-boat to assist us out to sea, out of New York.

Examined by Mr. OWEN:

I mean that tug-boat always assists us out from the dock or pier into the river or fair way.

Redirect:

At five o'clock and ten minutes that morning she was making 30 revolutions; that would not give her rate of more than half speed.

About eight knots is full speed, and four knots is half speed.

Recross by Mr. BEEBE:

The time is taken from the clock in the engine-room, and the time is New York time. The slate hangs close to the engine, near to me, and I see the entries made by the second engineer.

There is no one on the Othello now who was on board at the time that knows anything about the collision.

JAMES NIBBS.

Subscribed and sworn to before me this 29th day of Feb., A. D. 1876.

JOHN A. OSBORN,
U. S. Commissioner, S. D. N. Y.

192 Mr. Beebe reads deposition of ROBERT J. W. BRISTOW taken de bene esse on behalf of claimants of the Othello, as follows:

I am shipmaster; I hail from Edinburgh, Scotland; I have followed the sea 21 years; I have been shipmaster for 5 years; I am now attached to the Othello as master; I have been such since last November; I was not on board of her at the time of the collision.

Since I have been on her I have experimented as to what time it would require to stop her, when at full speed, to a dead stand-still, and then get her at a point of full speed; this was on the Georgia shoals, where there was no tide. From the time I rung, the stand by then stopped and turned back full speed, until the ship was dead stopped—sounded—which would require 5 minutes to do, and to head full speed again occupied 20 minutes.

Her full speed is 9 knots; on a slow, about 5 to 6 knots.

Q. Take her on the slow with the tide, young flood running about a mile to mile and half an hour, how far would she run before she was dead in the water—in your judgment, from your knowledge of her—upon a bell to stop, followed by two bells to back and a jingle bell to back strong.

A. I should think four times her length.

Q. Let her be running from 4 to 5 knots an hour, on a slow, then let the bells be rung to stop, and to back strong, would her helm, in your judgment, produce any perceptible influence on her heading?

A. Until she got sternway it would have no influence.

Her propeller is a right-hand propeller; going ahead, it would throw the water on her port quarter, and when working astern it would throw it on the opposite quarter. She requires 4 or 5 knots speed to give her steerage way; she will answer better on full speed; she answers her helm more slowly on a slow than when going at full speed.

193 Mr. Van Santvoord reads the deposition of ROBERT S. W. BRISTOW, on behalf of Connecticut and Stevens, as follows:

Examined by Mr. VAN SANTVOORD:

Q. When was this experiment made you speak of?

A. On the 13th of April, 1876.

The Georgia Shoals are off Massachusetts shore, embrace Martha Vineyards and that circle on her voyage to New York. That place was selected because crossing the shoals we are very apt to have thick weather, and the only guide we have is by the soundings if thick weather comes on, and also I have two chronometers, one with a large

rate, and one with a small rate, as I wish to verify, which one was least in error.

There were no standards of distance there, except the lightship, and that you may see or not, except also the soundings.

That experiment was not made at all with reference to give testimony in this suit.

They were made for my own satisfaction, and to qualify me to testify as to how long it would take to stop her at full speed to dead, in the water, and get her back to full speed again.

I tried her to see how long it would take to bring her to full stop when going at full speed. I have not tried to see how long it would take to bring her at full stop when going at half speed, nor did I try her to see how long it would take to bring her a full stop when going at dead slow speed—the only experiment I made is the one I have spoken of, the others are matters of judgment. None of the parties to this suit was present at that experiment.

Q. According to your judgment, could the Othello, going through the water at half-speed, be brought to a dead stop in her length and half?

194 A. No; certainly not.

Q. Could her speed, when going at half speed, be sensibly diminished in her length and half?

A. If going full speed astern, immediately it would, but not to a great extent.

Q. What effect upon the heading of the vessel would the reversing of the propeller full speed astern?

A. It would have a tendency to cast or throw her head to starboard.

Q. Suppose the order was given to full speed astern, and at the same time the helm was put to starboard, would the action of the screw counteract the effect of putting the helm to starboard?

A. No; until the vessel gathered sternway.

Q. Would it when the vessel gathered sternway?

A. Yes.

Q. Has the Othello a house on the main deck aft?

A. She has.

Q. What is in the house?

A. The forward part of the house is occupied as officers' rooms, messrooms, and sleeping-berths. There is a house, bath-house, water-closet, the engine-room; should say the house is about 8 feet high, I should think; next forward is the donkey-boiler; then comes the casing around the pipe; and then comes the caboose, a galley; then forward of that is a saloon, enclosing pantries; I cannot tell how long it is; should think it is between 60 and 70 feet; forward end of that saloon is used as a bridge and a wheel there; there is no deal on that bridge; there are three steering places on the ship; there is a telegraph on the bridge. On each side of that bridge is 4 boats. There is a lookout bridge nearer the stem; that forward bridge is within about sixty feet of the stem; there are only the two bridges of which I have spoken; I

195 cannot say here how far the stem of the Othello is out of the water; if she were drawing about 18 feet of water the stem would be, I should think, from 24 to 30 feet out of the water, but I never measured it. There is a hawser hole on each side of the stem; I cannot say how far these hawser holes are below the top of the rail; should think, perhaps, 8 or 10 feet. The Othello is, I think, 320 feet over all, and her width 36 feet. There is no turtle-back deck on the Othello.

R. J. W. BRISTOW.

Subscribed and sworn to before me this 21st day of April, 1876.
JOHN A. OSBORN,
U. S. Commissioner, S. D. N. Y.

JACOB BRANDOW, sworn and examined on behalf of the Starbuck, testified as follows:

By Mr. OWEN:

Q. You are master of the N. B. Starbuck?
A. Yes, sir.
Q. You were in August, 1875?
A. Yes, sir.
Q. Do you know the Othello?
A. Yes, sir.
Q. On the morning of the 18th August, 1875, did you assist the Othello out of her pier?
A. Yes, sir.
Q. Whereabouts was that?
A. Pier 44, East River.
Q. Tell us how you made fast, and what you did?
A. I took a line from her port quarter to hold her up against the flood tide, so that she could back out herself; after she was out clear of the docks, then I took a hawser from her bow, and straightened her down the river.
Q. Did you cast off after you had straightened her down the river?
A. Yes, sir.
196 Q. Whereabouts were you as to the Brooklyn and New York shore?
A. She might have been a little nearest the New York shore?
Q. I mean opposite what point, about?
A. Opposite Catherine Ferry, Empire Stores.
Q. You cast off there?
A. Yes, sir.
Q. What next occurred?
A. I followed the ship along down to about Wall street, or Fulton Ferry, and the captain sung out to me to go alongside to get some luggage.
Q. What side?
A. Starboard side.
Q. Did you make fast to her?
A. I got a bow line to her; that is all.
Q. After you did go along side, was your engine stopped?
A. I believe it was.
Q. Did you have anything more to do with the towing of the Othello after that?
A. No, sir.
Q. Had no more to do with towing her after casting off?
A. No, sir.

Cross examined by Judge BEEBE:

Q. What time did you go to the Othello on that morning?
A. I was ordered there about half-past four, I think.
Q. Did you arrive there about that time?
A. Yes, sir.
Q. How was the tide at the time you reached there?
A. It was about low water slack.
Q. Was there any delay in your getting out?

A. Yes, sir.
Q. About what time did she start to move out?
A. It must have been about five o'clock.
Q. At the time you started to move out, how was the tide?
A. The tide was just commencing to set up.
Q. Young flood?
A. Young flood.
Q. Which quarter did you take hold of her, from her stern?
197 A. I took hold of her from her port quarter.
Q. As she lay with her stern out?
A. Yes, sir.
Q. She backed out clear of the wharf?
A. Yes, sir.
Q. Then how did you go?
A. When she got clear of the pier I let go of the stern and took a bow hawser; I pulled her head down toward the battery.
Q. Her head was down the river?
A. Yes, sir.
Q. How was it as between the two reefs—Diamond Reef and Coenties Reef?
A. The course?
Q. Yes; Coenties Reef and Diamond Reef; how was you going when——
A. (Interrupting.) She was heading about down for Governor's Island, right down the channel; I should say she was heading in that direction.
Q. At the time you let go, about what point had the steamer reached?
A. About the Empire stores, Brooklyn.
Q. Those are the first stores above Marston & Powers' coal yard?
A. Yes, sir.
Q. Then you say you cast off?
A. Yes, sir.
Q. Then where did you go?
A. Where did I go?
Q. Yes, with your steamer?
A. I laid still until the steamer shot ahead of me.
Q. And you stopped?
A. Yes, sir.
Q. How was she running?
A. She didn't appear to be going very fast at the time.
Q. Had you noticed the Connecticut before you let go the hawser?
A. I noticed the Connecticut about the time I let go the hawser.
Q. At the time you noticed her, where was she going?
A. Going in the East River.
Q. In reference to Diamond Reef, where was she?
A. I should think she was about abreast of Diamond Reef.
Q. Northward or southward?
A. She appeared to me to be to the southward.
Q. How did you distinguish Diamond Reef?
198 A. I am familiar with the locality.
Q. Was there also a buoy on it?
A. Yes, sir.
Q. What kind of a morning was this?
A. It was a little hazy, but not but what anybody could see both shores perfectly plain.

Q. How was she heading in reference to the way the steamship was heading at the time you left?
A. Went by one another.
Q. Which side?
A. The steamer went to the westward.
Q. Between her and the New York shore?
A. Yes, sir.
Q. You say you stopped your way until the steamship passed down by you?
A. Yes, sir.
Q. Now, did you take any other position than the one either on the port or astern of the ship at any time before the collision; did you go anywhere?
A. No, sir.
Q. Did you ever go on her starboard quarter?
A. I went on her starboard quarter.
Q. I mean before you took your position on the starboard quarter, there was some time elapsed before you went there?
A. No, sir.
Q. Was there any time?
A. Yes, sir; there was some time.
Q. Now, what caused you to go on her starboard quarter?
A. I was hailed from the ship by the captain.
Q. To go where?
A. To go alongside.
Q. Well now, what did you do upon receiving that hail?
A. I passed under the stern of the ship from the port side to the starboard side, and run up on the starboard side.
Q. Abreast of what point were you then?
A. About abreast of Fulton Ferry.
Q. On the New York side?
A. Yes, sir.
Q. Did you notice the Connecticut at the time you left that position, and went around on the starboard side?
A. Yes, sir.
199 Q. Where was she then?
A. Heading up the river.
Q. How was her course compared with the course of the Othello?
A. She was heading then nearly parallel with the Brooklyn docks; she might have headed off a little.
Q. Was it perceptible?
A. I don't know that it was,
Q. Then you went around on the starboard side?
A. Yes, sir.
Q. Where had the steamer reached when you had taken your position on the starboard quarter?
A. When I got a line out she had got abreast of Wall Street Ferry.
Q. What line did you get out?
A. Head line.
Q. Bow line?
A. Yes, sir.
Q. One line?
A. Yes, sir.
Q. Did you get any order while you were lying out, or request from anybody?
A. I got a request to back.

Q. Had you noticed, before you got that order, what the steamer was doing immediately preceding that order?

A. The steamer was backing at the time.

Q. When the order came to you?

A. Yes, sir.

Q. What was the order that came to you?

A. To go back.

Q. Any particular order as to how you should back?

A. Back strong.

Q. Did you obey that order?

A. Yes, sir.

Q. Now, up to the time that you left the port side of the steamer and went on to her starboard side, as you have stated, and up to the time that you received the order to back, had you heard any signal or whistle from the Connecticut?

A. No, sir.

Q. Where had you been during all this time from the time that you commenced to tow her out all the way along up to the time that you got this order to back; where had you been; I mean where had you been, personally?

200 A. I was on deck part of the time, until we let go the hawser, and then I went into the pilot-house.

Q. Upon getting that order to back strong, what did you do?

A. I gave the signals to back.

Q. To your engineer?

A. Yes, sir; and passed out a stern line.

Q. Was that done?

A. Yes, sir.

Q. Did she back?

A. Yes, sir; I am positive she backed.

Q. At that time what part on the New York shore was the steamer opposite when you got the order to back?

A. About abreast of pier 8 or 9; I should think pier 9. She was nearly down to Coenties Reef.

Q. Had you observed that her headway had stopped by the motion of the vessel, that she was backing before you got the order to back?

A. No, sir; I did not observe that then.

Q. Do I not understand you to say that she had been backing before the order came to you?

A. Yes, sir.

Q. You did observe that she was backing before the order came to you to back?

A. The steamer was backing.

Q. Now, what was the next thing that attracted your attention?

A. Well, the Conneticut coming out across our bow.

Q. At that time, what was both of you doing?

A. Both backing. The headway of the steamer at that time had been overcome because I noticed by the shore, that is, when the Connecticut came out before our bow.

Q. When the Connecticut's nose struck out beyond your bow, how far was she ahead of you?

A. From a length and a half to a length and a quarter. Then I saw her bow come out.

Q. At that time was she going ahead?

A. The Connecticut?

Q. Yes.

201 A. I couldn't tell whether she was working ahead or not.

Q. Had she headway on?

A. Yes, sir; a little when I first saw her bow. I couldn't see her wheel.

Q. When she reached far enough to see her wheel, how was it?

A. Her wheels were stopped.

Q. Was she still going ahead?

A. I couldn't say.

Q. Did you see the collision?

A. Yes, sir.

Q. I want to know how much had the Connecticut got inside the Othello when the collision took place?

A. She was some ways inside; the hawsers were hanging in the water when the collision took place.

Q. Had substantially the whole steamer and the length of the hawsers got inside when the collision took place?

A. It is pretty hard to say.

Q. From the time that you started to go round the starboard side, up to the time the Connecticut crossed the bow of the Othello, as you have stated, you had not seen her at all?

A. No, sir.

Q. That is from the time you got round to the stern of the ship?

A. No, sir.

Q. Up to the time you got round to the starboard quarter, I understand you to say there was no perceptible change in the course of the Connecticut?

A. No, sir.

Q. Did you notice which tier of the boats you came in contact with?

A. Yes, sir.

Q. Did you notice what part of the tier you came in contact with?

A. With the starboard boat.

Q. The aft part, middle, or what?

A. It was abaft amidships.

Q. At that time, how do you think the steamship was as to her headway; whether she had any headway?

A. She was stopped by the land. I noticed that. Positive of that.

Q. Did you notice the land?

A. Yes, sir.

202 How long have you been towing around New York?

A. 24 years.

Q. Are you familiar with the harbor?

A. I am pretty familiar with it.

Q. About what was the proper course, if you know it, by compass, from where you started with the steamer, until she reached Coenties Reef?

A. Her course would be southwest.

Q. Then how?

A. Go down between the reefs, then haul out to the west, southwest, then west-northwest.

Q. You vary from west-southwest to west-northwest after passing Coenties Reef?

A. Yes, sir.

Q. But down to Coenties Reef your course is how?

A. About southwest.

Q. What is the usual course of those large steamers?

A. West-southwest.

Q. I speak of those two reefs, Coenties and Diamond; whether you go between those reefs with large vessels?

A. They always go between Coenties Reef and Diamond Reef.

Q. Will you tell me what would prevent your going out towards the Brooklyn shore, and going around between Diamond Reef and Governor's Island?

A. There is not room enough there to turn a big ship of that length.

Q. What is there across there?

A. There is what is called a sand spit along the Brooklyn shore.

Q. Where is Buttermilk Channel?

A. Right along the Brooklyn docks.

Q. Then there is a sand spur sets out there?

A. Yes, outside of that.

Q. So that you can't turn a long ship?

A. No, sir: you can't turn a long ship like that unless you have tug boats to help.

Q. But the usual and regular course is to go right down between those two reefs?

203 A. That is the regular course.

Q. About how fast do you think at the time of the collision the tide was running?

A. Well, the tide had got running about 2½ knots.

Q. At full tide it is strong there?

A. Yes, sir; it runs through pretty strong.

Q. About abreast of what point do you think this collision took place on the New York side?

A. It must have been near abreast of pier 8.

Q. About how far out from the end of the piers was Coenties Reef?

A. I should say the outside was probably 550 feet—500 to 550 feet.

Q. Now, as between New York shore and the line of Governor's Island, what part of the river do you think Diamond Reef occupied, whether it was nearest to Governor's Island or nearest to New York shore?

A. It is nearest to Governor's Island.

Q. About how much of the river do you think from New York shore?

A. It is about one-third of the river; about one-third from Governor's Island.

Q. Two-thirds one way and one-thirds the other?

A. Yes, sir.

Q. After the collision, what did you do with you boat?

A. The captain requested me to go out and save what I could of the wreck—pick up the boats and tow them in.

Q. Captain of what vessel?

A. The Othello.

Q. At the time of the collision, was the Othello backing?

A. Yes, sir.

Q. How far did she get up; how far did she back up the river?

A. She kept backing until she got nearly to Fulton Ferry.

Q. Then did you go to help any of the boats in with your boat?

A. Yes, sir.

Q. While you were down there did you see the S. A. Stevens?

A. Yes, sir.

204 Q. Did you have any talk with the pilot of the S. A. Stevens?

A. We had a few words.

Q. State what was said.

A. Well, he came alongside of my boat and took hold of those boats

that were drifting. He came alongside of my boat and took hold of them at the same time. He passed some remarks about the collision, and he said that he spoke to the pilot or captain of the Connecticut about blowing a whistle for this steamer, and he said there is no use blowing a whistle for them fellows, as they would not take any notice of them.

Q. What vessel are you still attached to?
A. N. B. Starbuck.
Q. Are you still pilot?
A. Yes, sir.
Q. At the time of this collision, what men had you on your boat?
A. There is the engineer, and mate was with me, who is sick.
Q. Who is he?
A. Sherburne.
Q. He is not able to go out?
A. No, sir.
Q. Then you had your fireman?
A. The fireman is left since.
Q. You had a fireman and cook?
A. Yes, sir.
Q. You don't know where the fireman is?
A. He is about New York somewheres. He was fireman there then.

Cross-examined by Mr. C. VAN SANTVOORD:

Q. Where is that pier 44 where this ship lay?
A. It is about foot of Rutgers street.
Q. How far is it up the river from the stone abuttment of the bridge?
A. You may call it half a mile or three-fourths of a mile?
Q. It is full three-fourths of a mile?
A. I don't know that it is quite.
Q. What is the number of the pier at the stone abuttment of the bridge on the New York side?
A. Pier 29.
205 Q. Well, which is the further east, the stone abuttment of the bridge on the New York side, or the stone abuttment on the Brooklyn side?
A. I think the one on the Brooklyn side is a little the furtherest.
Q. A little furtherest to the east?
A. There is not much difference.
Q. Then this pier 44 is still further up the river than the stone abutment on the New York side?
A. Yes, sir.
Q. Is pier 45 a longer pier than pier 44?
A. Yes, sir.
Q. What is the course of the river in the reach between the Fulton Ferry and the hook?
A. It is about west.
Q. East and west, is it?
A. Nearly east and west.
Q. What is the course of the river from Fulton Ferry down to the mouth in the reach from Fulton Ferry westward to Governor's Island?
A. Do you mean to start from Fulton Ferry on the New York side and go to the Battery, or from the center of the river?
Q. From the center of the river it is northeast-southwest?
A. Not exactly. I think it is a little westerly.
Q. (By Judge BEEBE.) A little westerly of southwest?

A. Yes, sir.

Q. And then how the other direction a little westerly of southwest coming down, and how is it going up?

A. Northeast-by-east.

Q. Then up the river you would call northeast-by-east, and then down the river southwest-by-west?

A. Yes, sir.

Q. Now, when you hauled the stern around of the steamship out into the reach of the river where she was hauled out, when you cast off the lines, how did you leave the steamer heading?

A. Heading down towards the Battery.

206 Q. Was she not heading as near as may be parallel with the line of the dock in that reach of the river?

A. No, sir; I think she was heading off from the New York docks.

Q. How much?

A. Probably a point or point and a half.

Q. In proceeding down in that reach of the river without a change of direction, in passing off Fulton Ferry, where would the steamship have struck the New York docks?

A. How is that?

Q. In proceeding down that reach of the river where this pier is, without any change of direction, where would she bring up on the New York shore?

A. When I left her?

Q. Yes.

A. I don't think she would have brought up on the New York shore at all; I think she would have gone down to Governor's Island.

Q. Can you explain that by any chart in the world?

A. I say she would have headed from the docks.

Q. How far up off Fulton Ferry?

A. I left her off Catharine Ferry; I left her in this light; I left her heading toward Brooklyn.

Q. Then in the direction which you left her, if she had continued on that course, would not she have gone northeast to Brooklyn shore before passing the Brooklyn Ferry?

A. I did not notice how she was heading; I am only saying about how she was heading.

Q. Then you don't know whether when she left you she was on a parallel line with the New York docks or not?

A. No, sir.

Q. Then you don't know but what in that reach of the river she kept down until she reach' Fulton Ferry in a direction due west?

A. She was not heading due west in that part of the river. You are speaking about Fulton Ferry.

207 Q. I am speaking of the upper reach of it.

A. I say when I left her, she was heading off the New York docks.

Q. How much?

A. I said a point and a half, may be.

Q. Then if she was heading a point and a half off the New York docks when you left her, would not she be nearer the Brooklyn side of the river when off Fulton Ferry than she was to the New York side?

A. Yes, sir; if she had kept her course.

Q. (By the COURT.) How near did she pass the piers of the Fulton Ferry?

A. She was in the center of the river.

Heading how?

A. Heading down between Diamond and Coenties Reef when I passed under her stern.

Q. Did you notice?

A. Yes, sir.

Q. Well, now, you threw off the line from your boat to the bow as soon as you had pulled the stern out into the river?

A. Yes, sir.

Q. Then where did you go to after you had cast off?

A. I laid still until the ship passed me.

Q. Which side of you did she pass?

A. She passed me on her port side.

Q. Then did you get a hail to come back to the ship?

A. Yes, sir.

Q. From what part of the ship did you get that hail?

A. One man was on the bridge, and the port captain came aft; both hailed me.

Q. Then you did come alongside on the starboard quarter?

A. Yes, sir; afterwards.

Q. Where?

A. Off Fulton Ferry, New York side.

Q. After you came alongside you were attached to the ship by a bow line?

A. Yes, sir.

Q. Then what did you go alongside for?

208 A. I was requested to take some luggage ashore.

Q. Then, while you lay on the starboard quarter, you were engaged in transferring this luggage?

A. Yes, sir.

Q. From where was that luggage brought?

A. I don't know; it was passed over the rail to me.

By the COURT:

Q. Who hailed you from the forward?

A. Both the captain and the port captain.

Q. From where were they standing on the steamer when they hailed you?

A. On the bridge.

Q. Which bridge?

A. The midship bridge.

Q. Then the port captain you saw come down aft and hail you aft?

A. Yes, sir.

By Mr. VAN SANTVOORD:

Q. Then, while you were on the starboard quarter, you were engaged in receiving this baggage?

A. Yes, sir.

Q. Have you any charge of the navigation of the Othello, from the time you came alongside on the starboard quarter?

A. No, sir.

Q. None whatever?

A. No, sir.

Q. And was there anything while you were on board on that starboard quarter and attending to the transfer of this baggage to call your attention particularly to the course of the steamship?

A. I always look at the course of a steamship.

Q. I ask you if there was anything to call your attention to it?

A. No, sir.
Q. And you gave no directions in regard to it?
A. No, sir.
Q. And what observations you made to it were casual, merely?
A. Yes, sir.
Judge BEEBE. Do you mean by that, accidental?
Mr. VAN SANTVOORD. Of course.
Q. Now, did you call the attention of Mills—where was Cap-
209 tain Mills standing while this baggage was being transferred?
A. He was about the deck, somewhere; I happened to see him and I called his attention, when I saw the Connecticut's bow.
Q. Was he on the deck of the Othello or Starbuck?
A. On the deck of the Othello.

By the COURT:

Q. Where was he standing?
A. Amidships on the steamer.
Q. What did you say to him?
A. I made some remarks about the collision, when I saw the Connecticut.

By Mr. VAN SANTVOORD:

Q. Then you saw the Connecticut standing across the direction of the ship, and you called the attention of Mills to it?
A. I spoke about it.
Q. What did he do?
A. The order had been given to back, then; he did not say anything to me.
Q. Didn't he give an order to you to back?
A. Not until he walked forward.
Q. He started to go forward of the bridge?
A. Yes, sir; and brought word to me to back.
Q. Opposite what point did you say you were at the time you spoke to Mills about that?
A. Off pier 9 or 10, somewhere; I did not notice particularly about that.
A. At the time the Starbuck was backed—the Starbuck did back, did she?
A. Yes, sir.
Q. As hard as she could?
A. Yes, sir.
Q. And at that time was there a bow line from the Starbuck to this ship?
A. Yes, sir; we had a bow line all the while.
Q. But no stern line?
No, sir.
Q. Did you notice whether the backing of the Starbuck had any effect on the direction of the steamship?
210 A. No, sir; I don't think it had much.
Q. I did not ask you whether you thought; I asked you whether you observed?
A. No, sir, it did not.
Q. Would it not necessarily have the effect, where she was attached on the starboard quarter of the steamship, to throw the stern of the steamship out and the bow of the steamship in?
A. Might if the ship was laying still.
Q. Would it if she was backing?

A. No, sir; I don't think it would.

Q. Then you think that the backing of the Starbuck on the starboard quarter of the ship, would not have any effect to throw the stern of the steamship out, and the stem in?

A. Not when a ship had way on her.

Q. You mean while she was going ahead?

A. I mean when she had headway on.

Q. When would it have?

A. A long heavy ship like that, it would not have much influence on her.

Q. Haven't you towed ships around this harbor for years?

A. Yes, sir.

Q. Don't you know the way to turn them around is to go ahead?

A. Yes, sir.

Q. Were you in a position to see whether there was any change of direction or not?

A. Yes, sir; I was in a position to see exactly which way the ship's head went.

Q. Which way did it go?

A. It went to port.

Q. And it did not go to starboard?

A. No, sir.

Q. While you were backing?

A. No, sir.

Q. And you noticed how it did go, at the time you were backing?

A. It did not swing starboard until some time after the collision took place.

Q. Well, now, captain, in going down the river in this upper reach, between off pier 44 and off Fulton Ferry, on which side of a steam-
211 ship would a steamer on any course, going up the lower reach, appear; the starboard side or the port side?

A. Which way would she appear?

Q. Yes; suppose the steamship is coming down?

A. If you say——

Q. (Interrupting.) She would appear off the port side?

A. It would depend on which side of the river——

Q. (Interrupting.) In this upper reach she is coming down that way; now, would not a vessel appear off the port bow of the steamship?

A. No, she would not, any more than she would on the other side, that I know of.

Q. Do you know the points of the compass?

A. Yes, sir.

Q. You know the north, south, east, and west?

A. Yes, sir; and all the rest of them.

Q. Now, what do you call the point between south and southwest?

A. South-southwest.

Q. Well, now, suppose a steamer is coming down that upper reach of the river, and she is standing on a course south-southwest, where would she bring up?

A. That would depend on the tide.

Q. Suppose she is coming in the direction in which she is steering?

A. You mean steering a straight course in the East River, between the hook and the Battery; may be go first one side and then the other.

Q. Would not a vessel go ashore very quick on the Brooklyn side, in coming down that reach of the river, if she was on the course south-southwest?

A. Yes, sir; but you cannot run a straight course with a heavy vessel.

Q. What do you mean by that?

A. The tide runs across the river every way, strikes one point over to another, &c.

212 Q. You mean there has to be somebody at the helm shifting her all the time, to keep her from going on the shore?

A. Yes, sir.

Q. How much water is there on the Brooklyn side of the river before you get down to Coenties Reef and opposite?

A. The sand spit?

Q. Before you get down to the sand spit?

A. About seven fathoms.

Q. You have towed these same steamers down, haven't you?

A. Towed most all kinds.

Q. From pier 44 out to sea?

A. I have helped them out of the river.

Q. You have towed them down, haven't you; you have gone ahead and towed them down out; you did not on this occasion, but you have done it before?

A. Very seldom go out of the river with them.

Q. You have done it since?

A. No, sir.

Q. Had you done it before?

A. Not that time; I don't know as ever I did; I have done it before on other steamers.

Q. What is the usual course in towing the ships down out of the river from below Fulton Ferry?

A. We go by observation.

By the COURT:

Q. When you are in the upper reach of the river, what do you head for?

A. For the middle of the river.

Q. Where?

A. Keep her in the middle of the river.

Q. Then, when you came to the next reach, Fulton Ferry, what do you head for?

A. Governor's Island.

Q. What part?

A. The middle of it.

Q. Then, how far do you go on that before you haul?

213 A. We came down abreast of Coenties Reef, and have a mark in Brooklyn.

Q. What mark is that?

A. It is the Pierpont House and the high steeple in the rear of it; when those two come in a range, we haul out.

Q. Then you are on a course between the two reefs?

A. Yes, sir.

By Mr. VAN SANTVOORD:

Q. That is on a course by the compass about what?

A. We hauled from west-southwest to west-northwest.

Q. But if there is nothing in the way, there is no difficulty further to the Brooklyn shore than that, before steering dow these two reefs?

A. I am speaking about this steeple and the Pierpont

Q. (By the COURT.) How many points do you haul when you get in that reach?

A. From southwest by south, if it is off we have to steer up to the west-northwest, with a heavy ship; keeping up off Governor's Island.

Q. (By Mr. BEEBE.) You vary between what points, between Coenties Reef and Diamond Reef?

A. We vary southwest by west away to west-northwest.

By the COURT:

Q. But endeavor to keep in the range of this church and Pierpont House?

A. Yes, sir; other times we have to haul up to west-northwest.

Q. But you try to keep those ranges?

A. Yes, sir.

Q. Do you know on which side of the Diamond Reef there is the deepest water?

A. Yes, sir.

Q. Which side?

214 A. West side; north side is supposed to be the deepest water.

Q. Have you looked at any marine chart published by the Government?

A. I don't know as I ever looked at that.

Q. Well, then, you don't know that the water is deepest on the Governor's Island side?

A. There may be a deep place there, but there is not room for a large ship.

Q. How much space do you think there is?

A. There is plenty of room, if the sand spit was not in the way.

Q. Where is that sand spit?

A. It is right south of Diamond Reef; I never saw a ship of that size going through there.

Q. Well, you say there may be as much water, but you think there is not as much room?

A. No, sir.

Q. And you have not been in the practice of taking vessels down inside of that reef?

A. I never saw a ship of that size go through.

Recross by Judge BEEBE:

Q. In reference to the easterly end of Governor's Island, whereabouts does that sand spit make; how near does it run to the Brooklyn shore?

A. There is hardly room to get a ship along there.

Q. Between the sand spit and Brooklyn shore?

A. Yes, sir.

Q. Then it runs near over to Governor's Island?

A. Yes, sir.

Q. In coming down with a big ship, you avoided that because there is not room to turn?

A. There is no room to turn a ship like that; if the sand spit was not there, you could get over to Brooklyn to turn her, but that is in the way.

Q. Did you ever see one of those large steamers do it?

A. No, sir.

Q. Is there a well-understood course between Diamond Reef and the hook at Coenties Reef?

A. Yes, sir; it is understood so by all pilots.

Q. Would you see anything that prevented the steamer Connecticut, coming down southwest, from coming in under the stern of that steamer?

A. I saw nothing to prevent her.

By Mr. OWEN:

Q. Under the circumstances could you have turned the steamer's head?

A. I couldn't do it; I didn't have power enough.

Q. I mean as you were heading first?

A. No, sir.

By Mr. VAN SANTVOORD:

Q. If you had been on board that ship couldn't you have cleared this tow without any difficulty?

A. I don't know.

Q. Didn't you say that if you had been on board it wouldn't have happened?

A. No, sir.

Q. Didn't you say that to Tournade?

A. No, sir; I will tell you.

Q. What?

A. The pilot told me he didn't see the tow, and I said I wished I had been on board with him, as I could have pointed the tow out to him; I said, "If I had been on the bridge, I would have seen the tow, and probably avoided the collision."

Q. Why couldn't he see the tow?

A. I don't know; he is not as familiar with New York Harbor as I am, here every week and every day of the year; he is probably here not in a week or two sometimes; sometimes again a month; that is the remark I made; I said if I had been along with the old man, I might have helped him to steer the tow.

By Judge BEEBE:

Q. You didn't dream the tow would go across your bows?

A. No, sir.

Q. Did you cross over there this morning?

216 A. Yes, sir.

Q. On the ferry-boat?

A. Yes, sir.

Q. Was not the river all full this morning?

A. I did not cross until half-past eleven o'clock.

By Mr. VAN SANTVOORD:

Q. Where is the place where these boats come to—the other boats?

A. The Albany tows?

Q. Yes, sir.

A. All the way from pier 3 to 7 and 8.

Q. That is the known place where they have come to for a great many years?

A. Yes, sir.

By Judge BEEBE:

Q. With a flood tide don't they generally make a wider sweep, so as to head down the tide?

A. Sometimes they have to make a shorter turn than they do at others; if there is no vessels at anchor, they make a long sweep.

Q. By going down outside Diamond Reef?

A. Yes, sir.

Q. Did you see anything to prevent their going under that steamer's stern?

A. No, sir.
Q. Didn't you think it was a hazardous attempt to try and cross that steamer's bow?
A. I did, without blowing any whistle.
Q. Do you know whether it is customary to make up those tows in the North River?
A. I don't know.

WILLIAM BROWN, sworn and examined on behalf of the Starbuck, testified as follows:

By Mr. OWEN:

Q. What is your business?
A. Chief engineer.
Q. Are you connected with Starbuck?
A. Yes, sir.
Q. Were you in August, in 1875?
A. Yes, sir.
Q. On the occasion of the collision between the Othello and the canal-boats?
A. Yes, sir.
Q. Do you remember going to pier 44?
A. Yes, sir.
217 Q. You remember making fast to the Othello?
A. Yes, sir.
Q. After you made fast to her, did you tow her out to the stream?
A. Yes, sir.
Q. What then happened?
A. Hauled her stern down against the tide, until she backed clear of the dock.
Q. Then what happened?
A. We let go of the stern line, and took a line from her bow; we hauled her down the river, and let go of the line.
Q. Were there any hails to the tug; and if so, what?
A. After we let go they hailed us to come alongside.
Q. What for—to take some baggage out?
A. Yes, sir.
Q. What side?
A. Starboard side.
Q. Whereabouts?
A. About abreast of Fulton Ferry; we got a line from amidships on the starboard side.
Q. After you got alongside was your engine stopped?
A. Yes, sir.
Q. Where did you go then?
A. Stopped on deck.
Q. Did you see them in the act of taking this luggage off?
A. Yes, sir.
Q. What was the next thing you did?
A. The next thing I got was signals to go back.
Q. From the time you got alongside until you received signals to go back had your engine moved forward or back?
A. No, sir.
Q. The steamer was towing you?
A. Yes, sir.

Cross-examination by Judge BEEBE:

Q. What part of the river do you think it was that the Othello, after you noticed, straightened down?

A. Well, I couldn't say exactly—off pier 44.

Q. What part of the river?

218 A. About the centre of the river.

Q. (By the COURT.) You were on deck and saw this?

A. Yes, sir.

Q. Whereabouts is your engine room?

A. It is a little abaft of admidships.

Q. Right on the main deck?

A. Yes, sir.

Q. About how wide is it?

A. I can put my head outside the door and look out through the side.

Q. There are two doors?

A. Yes, sir.

Q. About abreast of what point was the steamer at the time you cast off from her stem?

A. Well, she was abreast of Catharine Ferry; I couldn't say exactly; about abreast of Catharine Ferry.

Q. What did your boat do after you cast off?

A. Stopped.

Q. Which side of the steamer did you go?

A. The starboard; we were heading down the river, parallel with the shore.

Q. Was she coming down a slow or rapid speed?

A. Not very fast, as we lay still and she went by us.

Q. Before you had cast off from the hawser, and while you were yet forward of her, had you seen the Connecticut?

A. I saw the Connecticut somewhere down near the reef.

Q. Down near Diamond Reef?

A. Yes, sir.

Q. Which side of Diamond Reef?

A. I think inside a little; between Governor's Island and Diamond Reef.

Q. Which way was she heading?

A. Up the river.

Q. How did her course compare with yours?

A. I couldn't say in regard to the courses; she was on our port bow; on the port bow a little, and parallel.

Q. Both keeping on the courses up and down the river, as you

219 were then situated, would she have gone—where would both of them have gone; which side would you have gone?

A. She would have passed us on our port bow—the steamer's port bow.

Q. Now, you stopped your boat, and the steamer passed you?

A. Yes, sir.

Q. Where was it when you got the order to go alongside?

A. I didn't notice particularly; somewhere near Fulton Ferry; I couldn't say exactly.

Q. When you started to leave the port side of the ship to go to her starboard quarter, did you see the Connecticut?

A. I didn't notice her.

Q. When was the last time you noticed her?

A. When we had a hawser to the ship.

Q. About the time you cast off the hawser?
A. Yes, sir; until we got to the starboard.
Q. Now, did you notice any change of her course up to that time?
A. No, sir.
Q. Had you heard any signals from her up to that time?
A. No, sir.
Q. How was the tide at the time; about how fast flood was it running?
A. First quarter of the flood.
Q. About how many knots should you think it made?
A. I am not familiar with the tide; it probably runs about three knots.
Q. Then you run around and took a position on the starboard quarter?
A. Yes, sir.
Q. When the Starbuck had gone on the starboard quarter, about what point in New York were you abreast of?
A. Nearly abreast of Wall Street Ferry.
Q. What was the next thing that attracted your attention?
A. I saw the Connecticut coming out.
Q. By the bows of the Othello?
A. Yes, sir.
Q. Passing from port to starboard?
A. Yes, sir; heading on to the New York shore.
Q. Up to that time had you heard any signals?
A. Nothing at all.
220 Q. How fast did she seem to be going?
A. I couldn't say.
Q. Where were you standing at that time when you saw her coming out?
A. On deck.
Q. At that time when you saw her coming out, had you noticed whether the Othello was backing?
A. I couldn't say whether she was or not.
Q. You paid no attention to that?
A. No, sir.
Q. The first thing you saw was her nose?
A. Yes, sir.
Q. Can you say whether the Othello's speed had been stopped?
A. No, sir; there was no occasion.
Q. Did you notice, about that time, how the Othello was heading in reference to Coenties Reef or the drilling machine?
A. Heading near there.
Q. Where would her course have taken her; inside or outside?
A. I wouldn't say.
Q. Did you see the drilling machine in advance of seeing the Connecticut?
A. I had seen the drilling machine about the time I saw the Connecticut.
Q. You were running down towards her?
A. Yes, sir.
Q. When you had taken your position on the starboard hand of the steamer, did you notice whether the drilling machine was inside of her starboard bow?
A. I didn't notice.

Q. The first thing you observed was the nose of the Connecticut coming out beyond the Othello?

A. Yes, sir.

Q. How far did she run across the bows?

A. I couldn't say what the distance was.

Q. Did she run her whole length and her hawser's length?

A. She got by us before the steamer touched the first tiers of the boats.

Q. Couldn't you say whether the steamer had any headway on?

A. I couldn't say.

Q. Were you not in situation to see?

A. No, sir.

221 Q. Did you get any order or request, as to the Starbuck, after you had gone on to the starboard quarter?

A. Yes, sir; to go back.

Q. Was that before or after you saw the nose of the Connecticut——?

A. After.

Q. What did you do on receiving that order?

A. I obeyed, and went back strong.

Q. Did you notice how the headway was at the time the vessels came together?

A. I couldn't tell.

Q. Could you tell, by your own boat, whether your boat had sternway?

A. I couldn't tell.

Q. Up to the time you heard the collision, had you heard any signal from the Connecticut?

A. No, sir.

Q. After the collision, where did your boat go?

A. Alongside some of the canal-boats.

Q. Did you see the pilot of the Stevens?

A. Yes, sir.

Q. Did you hear any talk between your pilot and the pilot of the Stevens?

A. Yes, sir.

Q. What did you hear?

A. I heard him tell the pilot or captain of the Connecticut that he ought to have given some signals; he said, "To hell; they won't pay any attention to our whistles."

Cross-examined by Mr. VAN SANTVOORD:

Q. What was your business on board that boat?

A. Chief engineer.

Q. Had you any charge of the navigation of either vessel?

A. No, sir.

Q. What were you doing while the Starbuck was on the starboard quarter?

A. Standing on deck of the Starbuck.

Q. Minding your engine there?

A. The engines were standing still; I was standing on the deck alongside the engine.

Q. Had you anything to do with the transfer of this baggage?

A. Nothing at all.

Q. Did you notice or see Captain Mills there?

A. I didn't.

222 Q. Was Mr. Brandon there?

A. Yes, sir; he was in his pilot-house.

Q. Was Capt. Brandon in the pilot-house at the time that he called the attention of Capt. Mills to the presence of the Connecticut?

A. I didn't notice particularly whether they were or not.

Q. Do you know anything of his doing such a thing?

A. I couldn't say.

Q. Did you see the drilling machine?

A. Yes, sir; I see it every day.

Q. Did you see it about that time?

A. About that time.

Q. How near was the Connecticut; what was the bearing of the Connecticut to that drilling machine when you first saw her?

A. She was close by, to the southward a little.

Q. What do you mean by to the southward of it?

A. The drilling machine is on the reef, and she was to the southward of that.

Q. Do you mean over to Governor's Island?

A. Yes, sir.

Q. Did you notice opposite what point on the river you were, at the time you first saw the Connecticut?

A. What point the steamer was?

Q. Yes, sir.

A. About off Catharine Ferry.

Q. That is the first time you saw her?

A. Yes, sir; I didn't pay any attention after that to her.

Q. Then you first saw the Connecticut when you were opposite Catharine Ferry?

A. Yes, sir.

Q. Where was she, the Connecticut?

A. Off Diamond Reef.

Q. Off Diamond Reef, when you were off Catharine Ferry?

A. Yes, sir.

Q. After that you didn't see the Connecticut until when?

A. Until she passed our bow.

Q. (By the COURT.) How was the tow when you saw her?

A. I didn't notice the tow; the steamer hid the tow.

223 Q. Then you didn't see the Connecticut at any time between the time you saw her, when you were off Catharine Ferry, down to the time when you saw the stem crossing the bow of the Othello?

A. No, sir.

Q. How near to the time when you first saw the Connecticut, was the order given on your boat to back?

A. I couldn't say how near together they were.

Q. Wasn't it close together?

A. Probably a length and a half of the ship.

Q. I ask you how close upon your first seeing the Connecticut, when the steamship was crossing her line of direction, came the order to stop your vessel, to back the Starbuck?

A. When I first saw the Connecticut, the ship and the Connecticut was probably half or three-quarters of a mile apart.

Q. I didn't ask that; when you first saw her, while you were alongside——

A. (Interrupting.) I couldn't say; I may have been a length and a half of the ship off.

Q. When you saw her the second time, she was off about a length and a half of the ship?

A. Yes, sir.
Q. Now, then, when came the order to back?
A. Very soon.
Q. How soon?
A. A few moments.
Q. Where were you at the time that order was given?
A. I was on deck alongside the engine.
Q. Did you execute the order?
A. Yes, sir; immediately.
Q. From whom did you get the order?
A. From the pilot-house through a telegraph—a bell.

CHARLES L. WRIGHT, sworn and examined on behalf of the Othello, testified as follows:

Q. Were you in August, 1875, the agent of this Wilson line of steamers?
A. I was.
224 Q. How much cargo had the steamer in her at the time she sailed?
A. About 2,800 tons, independent of her coal.
Q. Her coal was how much?
A. 650 tons.
Q. She had about 3,450 tons?
A. Yes; cargo and coals.
Q. Now, did she sail immediately on that trip?
A. That time I was absent from the city.
Q. From the time of her sailing on that voyage up to the present time, have you kept watch to see if any of the crew, and which of them, returned?
A. Yes, sir; constantly.
Q. And have you known of any others that came here that knew of this collision, except those I have examined?
A. Yes, sir.

Cross-examined by Mr. SANTVOORD:

Q. Where were you at the time the Othello started from the other side, before this collision?
A. I was on the sea to Europe.
Q. You were not at Hull, at the time she left there?
A. No, sir.
Q. You don't know anything about the shipment of the crew there, over this way?
A. No, sir.
Q. And the crew that were on board the Othello, were they shipped on the other side?
A. They were always shipped at Hull, where the ship belongs.
Q. Then I suppose Hull is the place to find where those people are?
A. Yes, sir; we have endeavored to find out where they were; we have written constantly for them.

Adjourned to June 13th, 1876, at 11 o'clock, a. m.

225 BROOKLYN, *June* 13, 1876.

THOMAS M. LAWLOR, sworn and examined on behalf of the Connecticut, testified as follows:

(Map made by witness offered in evidence. Marked Ex. A., June 13, 1876, G. McK, Stern.)

Q. Did you make that map? (Ex. A. June 13, 1876, shown witness.)
A. Yes, sir.
Q. From what?
A. The U. S. Coast Survey.

By Judge BEEBE:

Q. Have you got it here?
A. No, sir.
Q. It is the U. S. Coast Survey enlarged?
A. Yes, sir.

The COURT:

Q. Accurately enlarged?
A. Yes, sir.
Q. How as to the preservation of the scale?
A. This is laid down 24 inches to the mile.
Q. How as to the size of the boats?
A. As to the size of the boats, they are accordingly. They are on the same scale. They might be a fraction larger. You have the tow and the steamboat.
Q. The location of the steamboat and the tow, that was from information?
A. Yes, sir.
Q. Does not come from the chart?
A. No, sir.
Q. You did not see the collision?
A. No, sir; I drew Diamond Reef and Coenties Reef and Governor's Island, and the whole thing agreed with the U. S. Survey, and the captain of the Connecticut and pilot, they located the steamboat with her tow and the steamship.

Cross-examined:

Q. On the Coast Survey the piers are not laid down.
A. They are partially laid down.
226 Q. Was this coast survey made since Diamond Reef was blasted?
A. I don't know.
Q. Is this the one from which you made your map?
A. No, sir.
Q. Is this one?
A. Neither one.
Q. That is the buoy?
A. Yes, sir.
Q. Now, does not that buoy on this chart show to the eastward of the easternmost point of Governor's Island? (Referring to the Coast Survey chart.)
A. This was taken from a chart in the office of the company.
Q. In the office of the Schuyler line?
A. Yes, sir.
Q. Now, here is the government chart, and that puts down Diamond Reef. Does not that show that buoy to the eastward of the most eastern point of Governor's Island?
A. The government chart shows it.
Q. Just see if that chart shows Coenties Reef?
A. (Referring to government chart.) Yes, sir. It is not laid down - it says Coenties Reef, but it is not laid down.
Q. This is made since the blasting?
A. I presume it is.

Q. "25" is the water they have got there?
A. I don't know.
Q. Suppose you call that 25 and measure the distance diagonally from Diamond Reef to Coenties Reef?
A. Coenties Reef is not laid down.
Q. Now measure that from Diamond Reef to Coenties Reef.
A. (After measuring according to the scale.) It is a little better than a quarter of a mile.
Q. Diagonally between those two reefs by the chart?
A. Yes, sir.
Q. Now, it was not from the chart in court that you took those measurements when you made your diagram?
A. No, sir.
Q. Neither of these in court?
A. No, sir.
227 Q. Now, you say that the chart which you saw had the piers on?
A. Well, they are represented about the same as they are here. I have taken a chart of the city of New York laid down.
Q. Then you have combined the two?
A. Yes, sir.
Q. Now, you take this chart which is now in court and take your chart, and they don't agree as to the location of time and place?
A. Coenties Reef is not laid down.
Q. I am talking about Diamond Reef.
A. It does not vary much.
Q. That there is the buoy?
A. Yes, sir.
Q. That there is the eastern end of Governor's Island; that is it?
A. Yes, sir.
Q. Now, you take this and see if it does not bring it somewhere below that line. That brings it some way above.
A. Yes, sir.
Q. Take it from Hamilton Ferry—that is Hamilton Ferry.
A. Yes, sir.
Q. Now, that is the way it runs there.
A. Yes, sir.
Q. Now, you take that (witness's own map) and mark that from Diamond Reef to Hamilton Ferry.
A. Hamilton Ferry does not show on this.

WILLIAM H. FOOTE, sworn and examined on behalf of the Connecticut, testified as follows:
Q. What is your business?
A. I am steamboating around about the harbor of New York.
Q. How many years have you been engaged in tugging about the harbor?
A. About twenty.
Q. Are you familiar with the reach of the East River from Fulton Ferry, on the Brooklyn side, down to its mouth?
A. Yes, sir.
Q. And the East River above that?
A. Yes, sir.
228 Q. Can you give us the direction of the lower reach of that river by the compass?
A. Fulton Ferry down?

Q. Yes.
A. Yes, sir; about southwest and northeast.
Q. What is the direction of the upper reach above the Fulton Ferry?
A. About east and west.
Q. Have you taken ships out to sea down through those reaches?
A. Yes, sir.
Q. By tugs?
A. Yes, sir.
Q. What is the usual course there in taking ships down out into the North River, and so out to sea through that reach?
A. Well, if there is plenty of water we generally take them in the middle, above Fulton Ferry, until we get down between Fulton and Wall street, and then we haul off to the eastward until we get to the eastward of Governor's Island. There are three trees on the island, and we get the middle one in a range with the flagstaff, and then haul up to the west. That was before the blasting.
Q. Where are those trees?
A. Just westward of the officers' quarters.
Q. Do you know where the most water was—which side of the buoy on Diamond Reef, in 1875, on the Governor's Island side or New York side?
A. Governor's Island side.
Q. Most water?
A. Yes, sir.
Q. Is there room enough to take a steamship down?
A. Yes, sir; a half a dozen of them.
Q. Do you know the bearing of the buoy on Diamond Reef in reference to that upper end of the island?
A. Well, I couldn't tell exactly; we range it when we come in with a tow; we want to see that buoy as to how the tide runs.
Q. (By Judge BEEBE.) That is not the question.
229 A. I couldn't tell; we calculate the range from the mouth of the ferry slip towards the east end of the island.
Q. Will you look at the location of the buoy on this map of Lawlor's, and state how that corresponds with your observations on the river.
(Objected to, as there is no evidence that it was made from a correct chart.)
Q. Will you mark on that map the location of the buoy in reference to Governor's Island, according to your observation of its place on the river?
A. I said it ranged out of the mouth of the ferry slip to the east end of the island. It is not much out of the way from the range of the ferry slip to the east end of the island.
Q. (By Judge BEEBE.) You take this point of the island and range it with the slip?
A. If I was going to set it down, and that buoy was not there, I should put it right about there.
Q. Still further to the westward?
A. Yes, sir.
Q. Just mark it.
(Witness marks the map with his initials.)

Cross-examined:

Q. Can you tell me of any large ship that you have taken from the upper reach of the river and carried to the southward of Diamond Reef, that drew 22 or 23 feet—a ship 350 feet long?

A. How is that?

Q. Tell me of any ship that you have taken down through between Governor's Island and Diamond Reef, from the upper reach of the East River, which ship had drawn from 22 to 23 feet of water and 350 feet long?

A. I never did.

230 Q. Now, your business for a good many years has been more in assisting tows?

A. Yes, sir; I have been in that for the last 18 years, more or less.

Q. Most all that time you have been assisting the Schuylers?

A. Yes, sir.

Q. And helping their tows in?

A. Yes, sir.

Q. And those tow-boats usually draw how much water?

A. That we help round there?

Q. Yes, sir.

A. 7, 8, or 10 feet; we towed vessels during the war; towed all the transports.

Q. Will you tell me which is the last large ship that you took down from the upper reaches of the East River, between Diamond Reef and Governor's Island?

A. I saw the Carrier Dove go through.

Q. Can you mention the names——

A. I can mention the name of a ship that came through.

Q. I am talking about what William H. Foote did.

A. I can't remember the names.

Q. Can you name any instance?

A. I can remember one that was brought in.

Q. Can you name any ship, a long, large ship, drawing 20 odd feet that you took through?

A. I say no.

Q. Look at this chart (government survey); now you see where that buoy is located?

A. Yes, sir.

Q. Now take the range and see whether you think that buoy is located right on that chart.

A. That buoy there is, according to my ideas, put down in the same position that it is on that other map; I don't think that is right according to my mark.

Q. But you think that and the mark on the other map is the same?

A. I do; yes, sir.

231 Q. You think that that is to the westward of the easternmost part of Governor's Island, that buoy; is that your judgment?

A. I could tell if I had a piece of paper. (Witness measures with a rule.)

Q. That is Hamilton Ferry.

A. Yes, sir; there is the ferry slip; there is the buoy. Now, you see where my rule goes on the island. (Witness draws a line on the Coast Survey map, and then takes the map made by Mr. Lawlor, and draws another line.)

Mr. VAN SANTVOORD. I will put in evidence the Coast Survey map, marked Exhibit B, June 13, '76, G. McK. Stern.

Both sides rest.

Cause submitted.

232 At a stated term of the district court of the United States of

America for the eastern district of New York, held at the United States court rooms in the city of Brooklyn on the 25th day of July, in the year of our Lord one thousand eight hundred and seventy-six.

The honorable Charles L. Benedict, district judge.

MADISON M. CALEB
vs.
THE STEAMSHIP OTHELLO, HER TACKLE, IMpleaded.

This cause having been heard upon the pleadings and proofs, and submitted upon the arguments and briefs of the advocates for the respective parties, and due deliberation having been had thereon—

Now, on motion of James K. Hill, proctor for libellant, it is ordered, adjudged, and decreed, that the libellant herein recover the damages by him sustained by reason of the matters alleged in the libel herein, and that the said steamship Othello be condemned therefor.

And on like motion it is further ordered that it be referred to B. L. Benedict, one of the commissioners of this court, to ascertain the amount due the libellant, and report thereon to this court, with all convenient speed.

CHAS. L. BENEDICT.

(Endorsed :) Interlocutory decree and order of reference. Filed July 25, 1876.

233 *Commissioner's report.*

United States district court, eastern district of New York.

M. M. CALEB ET AL
vs.
THE STEAMSHIP OTHELLO, &C.

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

In pursuance of a decretal order of reference made and entered in the above-entitled cause, by which it was referred to one of the commissioners of this court to ascertain the amount of libellant's damages herein and report thereon to the court, I, B. Lincoln Benedict, United States commissioner, to whom the matter was referred, do respectfully report, that I have been attended on such reference by the proctors for libellants and claimants, and have taken and examined the proofs offered in evidence, and thereupon find as follows:

Value of libellant's boat	$2,500 00
Interest from Aug. 18, 1875, to date	168 75
Value of cargo	10,549 00
Interest Aug., 1875, to date	712 06
Freight	616 00
Interest Aug., 1875, to date	41 58
Hall's effects on board	350 00
Interest from Aug. 18, 1875, to date	23 62
234 Roosevelt's effects on board	50 00
Interest from Aug. 18, 1875, to date	3 75
Amounting, at the date of this report, in all to the sum of	$15,014 77

All which is respectfully submitted.

B. LINCOLN BENEDICT,
U. S. Commissioner.

OCT. 4TH, 1876.

(Endorsed:) Commissioner's report. Filed October 4th, 1864. Confirmed nisi 4 days.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and seventy-six.

Present, the honorable Charles L. Benedict, district judge.

MADISON M. CALEB
against
THE STEAMSHIP OTHELLO, THE STEAMBOATS N. B. Starbuck, S. A. Stevens, and the Connecticut, their engines, &c.

This cause having been heard upon the pleadings and proofs,
235 and submitted upon the arguments and briefs of the advocates for the respective parties, and due deliberation having been had—

It is now ordered, adjudged, and decreed by the court that the libel filed in this action, as against each of the steamboats Connecticut, Sarah A. Stevens, and N. B. Starbuck, be, and the same is hereby, dismissed with costs; and

It is further ordered, adjudged, and decreed by the court that the libellant recover in this action against the steamship Othello, her engines, &c., the damages by him sustained, by reason of the collision in the pleadings mentioned, together with his costs, to be taxed.

And the costs of Schuyler's Steam Towboat Line, as claimant of the steamboat Connecticut, having been taxed at the sum of three hundred and sixteen $\frac{58}{100}$ dollars, it is now ordered, adjudged, and decreed that the said claimant, Schuyler's Steam Towboat Line recover against the libellant in this action the sum of three hundred and sixteen $\frac{58}{100}$ dollars for its costs, taxed as aforesaid.

And the costs of Wm. H. Foote and Samuel Schuyler, as claimants of the steamboat Sarah A. Stevens, having been taxed at the sum of seventy-four $\frac{27}{100}$ dollars, it is now ordered, adjudged, and decreed that said claimants, William H. Foote and Samuel Schuyler, recover against the libellant in this action the sum of seventy-four $\frac{27}{101}$ dollars for their costs, taxed as aforesaid.

And the costs of Jirah L. Ferguson and Jacob Brandow, as claimants of said steamboat N. B. Starbuck, having been taxed at the sum of two hundred and twenty and $\frac{50}{100}$ dollars, it is now ordered, adjudged, and decreed that the said claimants, Jirah L. Ferguson and Jacob Brandow, recover against the libellant in this action the sum of two hundred and twenty and $\frac{50}{100}$ dollars for their costs, taxed as aforesaid.

236 And the report of the commissioner to whom it was referred to ascertain and report the amount of the damage sustained by the libellant, from the collision in the pleadings mentioned, bearing date the fourth day of October, 1876, having been presented to the court, and filed, from which it appears that said damages amount to the sum of fifteen thousand and fourteen dollars and seventy-six cents, and no exceptions having been filed thereto, and the time for filing exceptions having expired—

Now, on motion of James K. Hill, proctor for said libellant,

It is ordered, adjudged, and decreed that said report be, and the same is hereby, confirmed, and that the said libellant recover in this action against the said steamship Othello, her engines, &c., the amount reported, with interest from the fourth day of October, 1876, together with his costs, taxed at two hundred and fifty-eight $\frac{77}{100}$ dollars, making in all the sum of fifteen thousand four hundred forty-eight $\frac{79}{100}$ dollars; and that the steamship Othello, her engines, &c., be condemned therefor.

And, on like motion, it is further ordered that unless an appeal be taken from this decree within the time limited by law and the rules and practice of this court, that the stipulators for costs and value on the part of the claimants of said steamship Othello cause the engagements of their stipulations to be performed, or show cause why execution should not be issued against them to enforce satisfaction of this decree against said steamship Othello.

CHARLES L. BENEDICT.

(Endorsed:) Final decree. Filed and entered November 27th, 1876.

237 *Opinion.*

JULY 21ST, 1876.

BENEDICT, J.:

There is little dispute as to the facts of the case, and its decision must depend upon the soundness of the position taken in behalf of the Othello, that it was the duty of the Connecticut to keep to the right and pass the Othello port to port, in accordance with the rules applicable to vessels meeting in opposite courses.

To my mind it is plain that the rule relied on by the Othello was not applicable to these vessels as they were situated, for the reason that the Connecticut was in the act of rounding to, for the purpose of landing her tow, and was not upon a course opposite to the Othello within the meaning of the rule.

With so large a tow and a flood tide, it was necessary for the Connecticut to take a large turn and to round close to Coenties Reef in order that her tow might swing round properly and thus be landed at the place of destination.

She was occupied in this manœuvre during a considerable space of time, moving slowly and with a helper alongside; such reasonable attention as is required of persons engaged in moving so large a vessel as the Othello through the East River would have disclosed the fact that the Connecticut was engaged in rounding to, to land her tow. But as the pilot in charge of the Othello himself says, although he saw the Connecticut when he was up Fulton Ferry, he did not discover that she had a tow astern until he was too near to avoid collision.

The pilot, on insufficient observation, assumed that the vessel ahead was a boat bound up the East River, and laid his course to go between that boat and Coenties Reef, when in fact he was encounter-
238 ing a towboat with numerous boats astern, extending a thousand feet in length over all, engaged in the somewhat delicate but necessary manœuvre of rounding Coenties Reef. The manœuvre in which the tow was engaged was one that she had a right to perform, as and where she was performing it, and it was the duty of the Othello to make careful observation, and to pass to eastward between the tow and the Brooklyn shore, thus permitting the tow to make the turn at the reef. This course could have been pursued without danger to the Othello, and

without compelling her to go to southward of the buoy, and the omission to pursue this course was a fault that renders her liable for the damage resulting.

I am unable to give time to refer to the portions of the evidence which support this view of the collision in question, and content myself with noting the statement of the captain of the Starbuck, that if he had been in charge of the Othello there would have been no collision, because he would have seen that the Connecticut had a tow. This shows plainly that proper attention would have disclosed to the Othello what the Connecticut was, and what she was engaged in doing, and also that if that had been known the collision would have been avoided.

For the neglect to make proper observation as to the approaching vessel, and to avoid her by passing to eastward, the Othello must be held to be chargeable with the loss that ensued.

The libel, as against the Connecticut and the Stevens, must be dismissed, and with costs. It must also be dismissed as against the Starbuck, and with costs, for the evidence shows that no action on her part conduced to the collision.

Against the Othello there must be a decree with an order of reference.

239 U. S. district court, eastern district of New York.

MADISON M. CALEB, LIBELLANT,
vs.
THE STEAMBOAT CONNECTICUT, HER ENGINES, &c., and impleaded with others.

SIR: Please take notice that the libellant hereby appeals from so much of the final decree in this case as dismisses the libel herein against the steam'oat Connecticut to the next term of the circuit court of the United States for the eastern district of New York, in the second circuit.

Dated New York, March 16, 1877.

Yours, &c.,

JAMES K. HILL,
Proctor for Libellant.

To C. VAN SANTVOORD, Esq.,
Proctor for Connecticut.

(Endorsed:) Notice of appeal. Filed March 27th, 1877.

240 United States district court for the eastern district of New York.

MADISON M. CALEB, LIB'T AND APPL'T,
vs.
THE STEAMBOAT CONNECTICUT, HER ENGINES, &c., impleaded with other boats, Schuyler's Steam Towboat Line, claim't and appl't.

To the honorable the circuit court of the United States for the eastern district of New York in the second circuit.

The appeal of the above-named libellant respectfully shows—

That on or about the 30th day of September, 1875, the libellant and appellant filed his libel in the district court of the United States for the eastern district of New York against the steamboat Connecticut, her engines, &c., and against other steamboats in said libel mentioned,

claiming over seventeen thousand dollars, and p'aying, among other things, for the reasons set forth in said libel that said steamboats might be condemned to pay the claim of the libellant with costs.

That process issued out of said court and the said steamboats were seized by the marshal, and duly bonded, and the claimant duly appeared and filed the claim to said steamboats, and thereafter duly filed its answer to said libel, praying that the same might be dismissed, as on reference thereto will more fully appear.

241 That the said cause came on to be heard before the honorable Charles A. Benedict, judge of the said district court, on or about the 7th day of June, 1876, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised therein, on or about the 25th day of July, 1876, made a decision or decree that the libellant recover of the steamship Othello, her engines, &c. (one of the vessels named in said libel), the damages by him sustained by reason of the matters and things in the libel alleged, and that the libel as to said steamboat Connecticut be dismissed with costs, and a final decree was entered in accordance therewith on or about November 27, 1876.

And this libellant and appellant is advised and insists that the said decision or decree, in so far as it dismisses the libel as against the said steamboat Connecticut, is erroneous, and ought to be reversed, inasmuch as the libellant and appellant is entitled to recover the damages by him sustained of said steamboat Connecticut and the steamboat S. A. Stevens and the steamship Othello jointly, together with his costs.

And this appellant, for this and other reasons, appeals from so much of said decision and decree as dismisses said libel as against said steamboat Connecticut, with costs, to the next circuit court to be held in the said district; and in the said appeal he intends to have said cause heard anew on the same pleadings and proofs, and other proofs to be introduced in said circuit court, and he prays that the record and proceedings may be returned to said circuit court, and that the said decision or decree may be so far reversed as to adjudge and decree that the libellant and appellant in this action recover his damages against said

242 steamboat Connecticut and the steamboat S. A. Stevens and the steamship Othello jointly, with costs, or that such decree may be made as to said circuit court may seem just.

JAMES K. HILL,
Proc. for Lib't and Appel't.

(Endorsed:) Petition of appeal. Filed March 27th, 1877.

Bond.

Know all men by these presents, that we, James K. Hill and Henry T. Wing, are held and firmly bound unto William H. Foote and Samuel Schuyler, in the sum of one hundred and fifty-eight and $\frac{54}{100}$ dollars to be paid to the said William H. Foote and Samuel Schuyler, their executors, administrators, or assigns, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas, Madison M. Caleb, as appellant, has appealed to the circuit court of the United States, for the southern district of New York, in the second circuit, from a decree of the district court of the United States for

the said eastern district, bearing date the 27th day of November, 1876, in a suit in which Madison M. Caleb is libellant, against the steamboat S. A. Stevens, her engines, &c.

Now, therefore, the condition of this obligation is such that if the above-named appellant, Madison M. Caleb, shall prosecute said
243 appeal with effect and pay all damages and costs which shall be awarded against him as such appellant therein, if he shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

JAS. K. HILL.
HENRY T. WING.

Sealed and delivered and taken and acknowledged this 24th day of March, 1877, before me,

JNO. BASSETT, JR.,
Notary Public, N. Y. City and County.

UNITED STATES OF AMERICA,
Southern District of New York, ss :

Henry T. Wing, being duly sworn, deposes and says that he resides in the eastern district of New York; that he is worth the sum of two hundred and ninety-seven and $\frac{03}{100}$ dollars over and above all his just debts and liabilities.

HENRY T. WING.

Sworn to this 24th day of March, A. D. 1877, before me,
JNO. BASSETT, JR.,
Notary Public, N. Y. City and County.

This bond approved as to form and amount and sufficiency of surety. Dated New York, March 24th, 1877.

ABM. VAN SANTVOORD,
Proctor for the S. A. Stevens.

244 U. S. district court, eastern district of New York.

MADISON M. CALEB, LIBELLANT,
vs.
THE STEAMBOAT S. A. STEVENS, HER ENGINES, &c., and impleaded with other boats.

SIR: Please take notice that the libellant hereby appeals from so much of the final decree in this case as dismisses the libel herein against the steamboat S. A. Stevens to the next term of the circuit court of the United States for the eastern district of New York, in the second circuit.

Dated New York, March 16, 1877.

Yours, &c.,

JAMES K. HILL,
Proctor for Lib't.

To A. VAN SANTVOORD, Esq.,
Proctor for S. A. Stevens.

(Endorsed:) Notice of appeal. Filed March 27th, 1877.

245 United States circuit court for the eastern district of New York.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
vs.
THE STEAMBOAT S. A. STEVENS, HER ENGINES, &c., impleaded with other boats, WILLIAM H. FOOTE, and SAMUEL SCHUYLER, claimants and appellees.

To the honorable the circuit court of the United States for the eastern district of New York in the second circuit:

The appeals of the above-named libellant respectfully shows—

That on or about the thirteenth day of September, 1875, the libellant and appellant filed his libel in the district court of the United States for the eastern district of New York, against the steamboat S. A. Stevens, her engines, &c., and against other steamboats in said libel mentioned, claiming over seventeen thousand dollars, and praying, among other things for the reasons set forth in said, libel, that said steamboats might be condemned to pay the claim of the libellant with costs.

That process issued out of said court and the said steamboats were seized by the marshal and duly bonded, and the claimants duly appeared and filed their claim to said steamboat, and thereafter duly filed their answer to said libel, praying that the same might be dismissed, as on reference thereto will more fully appear.

246 That the said cause came on to be heard before the honorable Charles L. Benedict, judge of the said district court, on or about the seventh day of June, 1876, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised therein on or about the twenty-fifth day of July, 1876, made a decision or decree that the libellant recover of the steamship Othello, her engines, &c. (one of the steam vessels named in said libel), the damages by him sustained by reason of the matters and things in the libel alleged, and that the libel as to said steamboat Connecticut be dismissed with costs, and final decree was entered in accordance therewith on or about November 27, 1876.

And this libellant and appellant is advised and insists that the said decision and decree, in so far as it dismisses the libel as against the said steamboat S. A. Stevens, is erroneous and ought to be reversed, inasmuch as the libellant and appellant is entitled to recover the damages by him sustained of said steamboat S. A. Stevens and the steamboat Connecticut and the steamship Othello jointly, together with his costs.

And this appellant, for this and other reasons, appeals from so much of said decision and decree as dismisses said libel as against said steamboat Connecticut with costs to the next circuit court, to be held in the ed district, and on the said appeal he intends to have said cause said anew on the same pleadings and proofs and other proofs to be inheard in said circuit court, and he prays that the record and proceedtroduce be returned to said circuit court, and that the said decision or ings may be so far reversed as to adjudge and decree that the libeldecree may appellant in this action recover his damages against said lant and S. A. Stevens and the steamboat Connecticut and the

247 steamboa

steamship Othello jointly with costs, or that such decree may be made as to said circuit court may seem just.

JAMES K. HILL,
Proctor for Libellant and Appellant.

(Endorsed:) Petition of appeal. Filed March 27, 1877.

Bond.

Know all men by these presents, that we, James K. Hill and Henry T. Wing, are held and firmly bound unto Schuyler's Steam and Towboat Line, in the sum of six hundred and thirty-three and $\frac{16}{100}$ dollars, to be paid to the said Schuyler's Steam & Towboat Line or its assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas Madison M. Caleb, as appellant, has appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the 27th day of November, 1876, in a suit in which Madison M. Caleb is libellant, against the steamboat, Connecticut, her engine, &c.:

Now, therefore, the conditions of this obligation is such, that if the above named appellant, Madison M. Caleb, shall prosecute said appeal with effect, and pay all damages and costs which shall be
248 awarded against him as such appellant therein if he shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

JAS. K. HILL. [S. L.]
HENRY T. WING. [L. S.]

Sealed and delivered and taken and acknowledged this 24th day of March, 1877, before me.

JNO. BASSETT, JR.,
Notary Public, New York City and Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry T. Wing, being duly sworn, deposes and says, that he resides in the eastern district of New York, that he is worth the sum of twelve hundred and sixty-six and $\frac{32}{100}$ dollars, over and above all his just debts and liabilities.

HENRY T. WING.

Sworn to this 24th day of November, A. D. 1877, before me.

JNO. BASSETT, JR.,
Notary Public, New York City and Co.

This bond approved as to form and amount and sufficiency of surety. Dated New York, March, 1877.

C. VAN SANTVOORD,
Proctor for Connecticut.

249 U. S. circuit court, eastern district of New York.

MADISON M. CALEB
against
THE STEAMSHIP OTHELLO, HER ENGINES, &C., impl'd with the steamboats N. B. Starbuck, S. A. Stevens, and the Connecticut, their engines, &c.

GENTLEMEN: Please take notice that the claimant of the steamship Othello herein hereby appeals from the final decree entered herein on the twenty-seventh day of November, 1876, or so much thereof as condemns the said steamship Othello to pay the libellant's claim for damages, with costs, to the next circuit court, to be holden in and for the eastern district of New York.

Dated Dec. 5, 1876.

Yours, &c.,

BEEBE, WILCOX & HOBBS,
Proctors for Claimants Steamship Othello.

To JAS. K. HILL, Esq.,
Lib'l'ts' Proctors.
B. LINCOLN BENEDICT,
Clerk, &c.

(Endorsed:) Notice of appeal. Filed December 6th, 1877.

250 U. S. circuit court.

MADISON M. CALEB ET AL., LIBELLANTS AND appellees,
against
THE STEAMSHIP OTHELLO, HER ENGINES, &C., impleaded with steamboat Connecticut, S. A. Stevens, and steamtug N. B. Starbuck, Charles Wilson and Arthur Wilson, claimants and appellants.

To the honorable the circuit court of the United States for the eastern district of New York.

The petition and appeal of Charles Wilson and Arthur Wilson, claimants of steamship Othello, respectfully showeth to this court—

That on or about the thirtieth day of September, 1875, the above-named libellants, Madison M. Caleb and others, filed their libel in the district court of the United States for the eastern district of New *of New* York against the said steamship Othello, her engines, &c., steamboat Connecticut, S. A. Stevens, and steam-tug N. B. Starbuck, their engines, &c., in a cause of collision, &c., and on the same day processes was issued in said action, and that said libels prayed for the condemnation and sale of said vessels to pay and satisfy the demands of libellants, to which said libel the petitioners refer for the contents.

251 That thereafter, and on the sixth day of October, 1875, in the year last aforesaid, the claimants, Charles Wilson and Arthur Wilson, having filed their claim, and executed the necessary stipulations for costs in said suit, and having executed a stipulation for value pursuant to an order of the court on the sixth day of October, 1875, made, which said last-mentioned stipulation was given for the benefit of the libellants

in said suit in the libels mentioned; and that, thereafter, the claimants did file their answer to sail libel, alleging as therein contained, and insisting that said steamship Othello was not liable for the damages claimed by the libellants, and praying that the said district court would pronounce against said libel, and as will more fully appear on reference to said answer, and to which for the contents thereof these appellants ask leave to refer.

That thereafter said cause came on to be tried and to be heard before the honorable Charles L. Benedict, judge of the said district court, on the 8th, 9th, 12th, and 13th days of June, 1876, upon the allegations and proofs adduced by the respective parties, and said judge having advised therein, on or about the day of July, in the year last aforesaid, made a decretal order or sentence bearing date that day, that the libellants in said suit recover in said action against the steamship Othello, her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, and with costs to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages, and report thereon to said court, and that the libel as to the other vessels be dismissed, with costs to be taxed against libellants, as by reference to said decretal order will more fully appear; that after proceeding with such reference before B.
252 Lincoln Benedict, esq., one of the said commissioners, he made his report to said court, bearing date October 2nd, 1876.

That thereafter, and on the 27th day of November, 1876, a final decree was made, bearing date that day, for the recovery by the libellants of the sum of fifteen thousand four hundred and forty-eight $\frac{7}{100}$ dollars, which included costs. against said steamship Othello, her engines, tackle, &c., as will more fully appear by reference to said decree, to which said reference is had for its contents.

And these appellants are advised and believe and insist that said decree is erroneous, inasmuch as the said libel should have been dismissed, with costs, as to the steamship Othello and the other vessels, or some one of them, held to pay libellants' damages.

And these appellants, for these and other reasons, appeal from the whole of said decree to the next circuit court, to be held in the said district, (and on said appeal they intend to have the cause heard anew, and seek a new decision on the facts, the pleadings, and proofs in the district court, and other proofs to be produced in the circuit court, and to pray different relief), and it prays that the said decree and every part thereof may be reversed, with costs, or such other decree thereupon made as to the said circuit court shall seem just, and the said appellees be condemned to pay to those appellants their costs and damages in the premises.

And these appellants will ever pray, &c.

BEEBE, WILCOX & HOBBS,
Proctor for Appellants, Claimants of Steamship Othello.

To JAMES K. HILL,
Proctor for Libellants and Appellees.

253 (Endorsed:) Petition of appeal. Filed April 17th, 1877.

Bond.

Know all men by these presents, that we, Charles Wilson and Arthur Wilson, claimants, and Charles L. Wright and Edward G. Tinker, are held and firmly bound unto Madison M. Caleb, in the sum of thirty

thousand and twenty-nine $\frac{52}{100}$ dollars, to be paid to the said Madison M. Caleb, his heirs, executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of November, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas Charles Wilson and Arthur Wilson, as appellants, have appealed to the circuit court of the United States, for the eastern district of New York, in the second circuit, from a decree of the district court of the United States, for the said eastern district, bearing date the 27th day of November, 1876, in a suit in which Madison M. Caleb was libellant, against the steamship Othello, her engines, &c.:

Now, therefore, the condition of this obligation is such, that if the above-named appellants, Charles Wilson and Arthur Wilson, shall prosecute said appeal with effect, and pay all damages and costs which shall be awarded against them as such appellants therein, if they shall fail to make said appeal good, then this obligation shall be void,
254 otherwise the same shall be and remain in full force and effect.

CHARLES WILSON, AND
ARTHUR WILSON,
By CHARLES L. WRIGHT,
Agent.

CHARLES L. WRIGHT.
E. G. TINKER.

Sealed, and delivered, and taken, and acknowledged, this 9th day of Nov., 1876, before me.

[L. S.] WM. H. RAFTERY,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles L. Wright, and Edward G. Tinker, being duly sworn, deposes and says that he resides in the southern district of New York; that he is worth the sum of thirty thousand and twenty-nine $\frac{52}{100}$ dollars over and above all his just debts and liabilities.

CHARLES L. WRIGHT,
E. G. TINKER.

Sworn to, this ninth day of Nov., A. D. 1876, before me.

[L. S.] WM. H. RAFTERY,
Notary Public, N. Y. Co.

This bond approved as to form and amount and sufficiency of surety. Dated New York, February 6th, 1877.

JAS. K. HILL,
Proctor for Lib'l't.

255 At a stated term of the circuit court of the United States of America, for the eastern district of New York, in the second circuit, on September 11th, 1878.

Before Hon. Ward Hunt, asso. justice.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
vs.
THE STEAMBOATS CONNECTICUT, S. A. STEVENS, and N. B. Starbuck, their engines, &c., claimants and appellees, and The Steamboat Othello, claimants and appellants.

Appearances: J. K. Hill and H. T. Wing for libellants; C. Van Santvoord for Connecticut; Ab'm Van Santvoord for S. A. Stevens; Messrs. Beebe, Wilcox & Hobbs for Othello; Messrs. Owen and Gray for Starbuck.

256 Cause argued and submitted; decision reserved.

257 U. S. circuit court, eastern district of New York.

MADISON M. CALEB
agst.
THE STEAMSHIP OTHELLO, IMPLEADED WITH others.

Testimony of witnesses on behalf of the steamship Othello, taken before E. L. Owen, a U. S. commissioner, under and in pursuance of the notice hereto annexed.

It is stipulated by and between the respective counsel that the testimony be taken by a stenographer, and that his minutes, when transcribed, be certified to by the commissioner as though originally taken by the commissioner.

JOHN MAGINN, a witness sworn and examined on behalf of the said steamship, deposes and says as follows:

Examined by Judge BEEBE:

Q. Capt. Maginn, what is your age?

A. About 70 years, sir, more or less.

Q. What is your business?

A. I am following, sir, the business of harbor-master.

258 Q. Previous to your being appointed harbor-master, what was your business?

A. Pilot, by way of Sandy Hook.

Q. For how many years had you been such?

A. 45 years, sir.

Q. How long have you been in that business—either as pilot or harbor-master?

A. 52 years.

Q. During your experience as pilot have you piloted in and out of New York all classes of vessels?

A. Yes, sir.

Q. During that time has your experience made you entirely familiar with the harbor of New York?

A. Yes, sir; so far as human understanding will allow a man to go in all practical measures.

Q. In reference to piloting steamers in and out of the port of New York, state generally what has been your experience.

A. My experience is extended over forty years; from the very early beginning of steam navigation.

Q. Have you taken out, during your experience, vessels of all sizes?

A. Yes, sir.

Q. From both rivers?

A. Yes, sir.

Q. A propeller loaded, 320 feet long, 36 feet beam, drawing 22 feet 6 inches of water, backs out into the East River, bound to sea—from pier 44, the tide being young flood, there being nothing in the way to prevent it, what course do you take in leaving the East River—what course—what would be the proper course and the usual course?

A. From the point of starting?

Q. Yes.

A. My course would be heading down for Governor's Island until I reached Coenties slip—keeping the Brooklyn shore well on board.

Q. Then how?

259 A. Then I should pass out between the two reefs, having Coenties Reef on my starboard and Diamond Reef on my port hand, sir.

Q. In order to do that would you have to change your course at all from what you had come down the river; and, if so, how would you change it?

A. I would then port the helm, sir, to avoid the reef.

Q. And about how many points would you change?

A. Well, say 2½ to 3 points.

Q. How far would you be from Coenties Reef when you made the change to the port?

A. Within two or three hundred feet. It would be controlled by circumstances.

Q. How far off would it be practicable for you to pass Coenties Reef when you were going down the river—the regular course?

A. From two to three hundred feet, passing into the channel between the two reefs, so that I would not touch one or the other.

Q. Now, then, having taken a steamer of the description of which I have spoken out of pier 44, is there any other usual or practicable method of taking her out to sea, except the one you have stated?

A. None whatever, sir, for that character of vessel.

Q. Now, captain, having taken your vessel out into the stream, headed down about the middle of the river, running along from four to five miles an hour, you make off your port hand a tow coming up between Diamond Reef and Governor's Island, but having passed Diamond Reef, and she heading, if anything, out from you, inclining from the Brooklyn shore, with a young flood tide, you make her out in that way with a tow of five or six tiers of boats, what course would you take with your steamer under such circumstances?

(Mr. Van Santvoord objected to question as irrelevant, as it has no relative bearing on this case.)

260 A. Well, sir; the way I understand it, I find that vessel passing on my port bow; if she continued her course, I should continue mine.

Q. Suppose that afterwards, and when your steamer had reached the point below Fulton Ferry, abreast or below it, the course of that tow was suddenly and abruptly changed to port and towards the New York shore, crossing your course, what, in your judgment, would be proper to do under such circumstances with your vessel?

A. If I was under the impression there was going to be a collision, I should back out.

Q. Stop the steamer and back strong out?

A. Yes, sir.

Q. With the tide flood and the steamer going off to port, the steam-

boat itself being 200 feet and upwards in length, the tow being towed by a hawser about 200 feet long, and there being five tiers of boats, making between five and six hundred feet more and the tide young flood, would it, in your judgment, be either prudent or practicable for you to keep on with your steamer, and attempt to clear the tow by starboarding the helm of the steamer, and going off to port?

A. Certainly not; I should stop the ship, sir, and back the ship, that is the only practicable way; the current being flood, the swinging of the tow would be pressing it broadside to the steamer.

Q. Suppose by such a manœuvre as that you had succeeded in clearing the stern of the tow, bearing in mind you are going down about the middle of the river with a steamer, before you make your change to port, or make your change to starboard, perhaps, would it be practicable or possible for you after that to take your course so as to get your bearings to go between these two reefs. Mind, you have succeeded in going by the tow, could you then change and get back so as to take your course, after passing her?

A. I should have to do so to enter the channel.

261 Q. Could you come around then and get back so as to take your bearings between these two reefs?

A. I should have to hold the ship in that position to get back to the position where I originally started from.

Q. Is there anything that prevents your running close to Governor's Island?

A. On what end, sir?

Q. The east end.

A. Yes, sir.

Q. What is it?

A. Sand-spit.

Q. How far does that set off Governor's Island?

A. The eastern end of it extends perhaps 500 yards. From Governor's Island there is a passage way between it for small-sized vessels.

Q. Did you ever take steamers of the character, and drawing the water spoken of, out through Buttermilk Channel?

A. No, sir.

Q. Is it usual or customary?

A. In my practice I say I never did.

Q. In your judgment is there any other practicable way of taking a vessel out of the East River, of the size spoken of, the Othello—except between the reefs?

A. In my experience, sir, I have never taken any steamer of the character spoken of out through Buttermilk Channel, or any other way except between Diamond Reef and Coenties Reef.

Cross-examined by Mr. VAN SANTVOORD:

Q. What are the qualifications for receiving a commission as a Sandy Hook pilot?

A. A knowledge of the character of all the shoals, channels, and lights, landmarks, &c., and a full knowledge of what is called the bottom of which he has to pass over.

Q. Does he not receive his commission with more especial reference to his knowledge of the channel out by the way of Sandy Hook?

262 A. No, sir; he must be fully acquainted with the channels in both these rivers, besides the channels from Sandy Hook in addition to them.

Q. Do you know where pier 44 East River is?

A. Yes, but I could not localize it exactly; I think it is near Pike street; I think it is between Pike and Market street.

Q. Do you know where the Catherine Street Ferry is, on the New York side?

A. Yes, sir; pier 44 is above that.

Q. How many blocks?

A. Three or four.

Q. But it is above Catherine Ferry slip on the New York side, and the pier itself is on the New York side of that reach of the river?

A. Yes, sir.

Q. Do you know what the direction of the upper reach of the river is from Fulton street, above Fulton Street Ferry, above the abutments of the bridge, up the river?

A. About east and west.

Q. Suppose that a steamship is hauled out into the river from pier 44 E. R. stern out, and then her bow is pulled down in the middle of the river, in the upper reach, would it be practicable for that steamship going down into the lower reach and out to keep along within 500 feet of the New York shore?

A. She might do that until she got down to Coenties Reef.

Q. Then what should she do?

A. She would have to haul out to the southward and west to go between the two reefs.

Q. Passing from the upper reach of the river down into the lower reach, is there any necessity of keeping so far out from the Brooklyn shore as the middle of the river?

A. There is nothing to prevent her keeping the Brooklyn shore pretty well on board until she gets down opposite these reefs.

263 Q. Well, when she gets down there she can go out on most any course?

A. Yes, sir.

Q. If she is more to the southward, then she has to haul more to the westward in going out between the reefs?

A. Yes, sir.

Q. How wide is the channel between Diamond Reef and Coenties Reef?

A. From rock to rock is about 500 yards.

Q. How near to the Diamond Reef could a steamer going down on the Brooklyn shore, before get'ing of Coenties Reef, pass to the Diamond Reef in passing out?

A. Well, it falls off very suddenly from thirteen to twenty-four feet, and so increases until you get to the mouth of the East River, where you find eleven fathoms.

Q. You have not answered my question very definitely. How near could a vessel of this character approach the Diamond Reef in passing out?

A. Approaching the Diamond Reef?

Q. She is going out between Coenties and Diamond Reef and keeping along the Brooklyn shore as far as prudent and still keeping herself close to the Diamond Reef as possible.

A. Well, 100 feet.

Q. On which side of the channel between the Diamond Reef and the Coenties Reef is the water the deepest; that is, is it deeper on the Diamond Reef side or to the Coenties Reef side?

A. It is deeper towards the Diamond Reef side.

Q. And is there good water all the way between these two reefs?

A. Yes, sir; something like 25 feet at the lowest tide.
Q. How long have you been harbor master?
A. Since 1872.
Q. Has not the channel between the buoy and Diamond Reef and Governor's Island been deepened within two or three years?
264 A. I so understand. From the reports in the papers made by our celebrated engineer, Capt. Newton, the parties left some very ugly points sticking out yet.
Q. Is there room in the channel between that buoy and Governor's Island for a steamer of that size to pass out?
A. No, sir.
Q. What is the difficulty?
A. Scattering rock between the reef and Governor's Island. That rock is the prominent rock.
Q. Pilots taking vessels out the East River are not in the habit of taking them between the buoy and Governor's Island?
A. If they do, they do it from ignorance.
Q. They are not in the habit of doing it?
A. No, sir.

Redirect examination by Judge BEEBE:

Q. Which way does that sand-spit of which you have spoken as being off the east end of Governor's Island, which way does it set?
A. It is to the east, about 500 yards.
Q. Would that prevent your going in near to Governor's Island in going from the Brooklyn side, having it well in hand, to within 1,500 feet of Governor's Island?
A. Yes; far beyond that.
Q. How near would you go to Governor's Island if you had the Brooklyn shore in hand in going down—how far to the east of Governor's Island would you cross to go between Coenties and Diamond Reef?
A. Well, as far up as Montague Ferry.
Q. For what reason, Capt. Maginn, do you say that you want to be not more than two or three hundred feet to the southward of Coenties Reef when you make your change to go between the reefs?
A. The continuation of the flood tide going into the East River, sir.

265 JOHN HENRY ALICE, a witness produced, sworn, and examined on behalf of the steamship Othello.

Examined by Mr. BEEBE:

Q. What is your business?
A. Sandy Aook pilot.
Q. What is your age?
A. I am 35 years of age.
Q. How long have you been a Sandy Hook pilot?
A. Six years.
Q. What experience have you in reference to taking steamers out of the East River?
A. A good deal; I take them of all sizes and classes.
Q. And frequently?
A. And frequently.
Q. You have been present and heard the testimony of Mr. Maginn?
A. I have.
Q. And you say that you concur in his testimony as to navigation?
A. Yes.

Cross-examination:

Q. And you concur with Capt. Maginn as to the width of the channel between the Diamond Reef and the Coenties Reef?

A. As near as I can come to it. I can't tell within a few yards, or anybody else, except I go there and measure it.

BERNARD BRADY, a witness produced, sworn, and *and* examined on behalf of the steamship Othello.

Examined by Mr. BEEBE:

Q. Are you a Sandy Hook pilot?

A. Yes.

Q. What is your age?

A. 35 years.

Q. How long have you been such?

A. Eight years.

266 Q. What experience have you in pulling steamers out of the East River?

A. Well, I have had experience with all classes of vessels.

Q. Well, how much experience have you, with reference to steamers?

A. The last three years I have had experience in all classes of sea-going steamers.

Q. Well, you have pilotted out a good many?

A. Yes.

Q. You have pilotted a good many steamers out of East River?

A. Yes.

Q. You have been present and heard the deposition of Mr. Maginn?

A. Yes.

Q. And you concur in his judgment in relation to the navigation?

A. Yes.

JOSEPH HENDERSON, a witness produced, sworn and examined on behalf of the steamship Othello.

Examined by Mr. BEEBE:

Q. You are a Sandy Hook pilot?

A. Yes.

Q. How old?

A. 51, this September.

Q. How long have you been a Sandy Hook pilot?

A. Since 1848.

Q. What is your experience with reference to pulling steamers out of the East River?

A. My experience is just the same as——

Q. What is the extent of it, I mean?

A. Well—how many years?

Q. Yes.

A. Well, ever since—oh, for the last 25 years I have been tak-

267 ing steamers more or less out of the East River, and have handled as many steamers as any other pilot in the port in the same length of time, excepting Mr. Maginn.

Q. Did you ever handle the Othello?

A. I have, sir.

Q. Took her out?

A. Brought her in and taken her out; taken her to that same pier 44, and took her from that same pier.

Q. You have been present, and heard Mr. Maginn's testimony?
A. Yes, sir.
Q. And you concur with him in his judgment, and in what he said?
A. I do, sir.

Cross-examined:

Q. In taking her out, Capt. Henderson, were you on board the Othello or in a tug towing her?
A. When I was pilot of her?
Q. Yes.
A. On board the ship, sir.
Q. On board the ship?
A. Yes, sir.
Q. And when you had taken her out, did she go out under her own steam, or was she towed out by a tug ahead?
A. On her own steam, and with the aid of a tug, too.
Q. When she has gone out with the aid of a tug, where has the tug been placed?
A. The tug had a line from her port bow, lying along aft on the quarter, and as we backed the ship out and the stern——
Q. No, I don't mean coming out; I mean down the river after she was out.
A. After she was out we cast the tug adrift, after we swung the ship and went under our own steam.
Q. In every instance where you have taken it out?
A. I took her out and brought her in once.
268 Q. You took her out once and brought her in once?
A. Yes.
Q. And when you took her out and brought her in, you were on board the Othello?
A. I was on board the Othello.
Q. Did you go out and come in with the assistance of a tug, or did she go of her own steam?
A. When I brought the ship in I put her to the dock on the last of the ebb tide on her own steam, and had a tug to help shove my stern up the river after I got her bow into the dock—after she was at the dock.
Q. And how when you went out?
A. When I went out we backed out under our own steam, with this hawser, as I told you, run for'ard down the quarter, and as the ship went out into the river we let go aft, and let the strain come on her bow, and when she was straight we hauled in the rope and went down the river under our own steam.
Q. When was it that you took her out?
A. I think it was two years ago; yes, two years ago this summer; I think two years ago last August. Last month I brought her in and took her out; somewhere about that; summer before last.

It is stipulated that the signing of the for'going depositions by the witnesses be waived.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Edward L. Owen, the commissioner before whom the testimony in this case was taken, do hereby certify that at the time mentioned in the foregoing testimony I was attended by the proctors for the respective

parties, and the witnesses; that the witnesses were each by me
269 first duly sworn to testify the truth, the whole truth, and nothing but the truth, in respect of the matter to be inquired of; that by consent of the parties the testimony was reduced to writing by a stenographer, and the signing of the testimony was waived by the respective parties.

In witness whereof I have hereunto subscribed my name and affixed my seal, this 6th day of September, A. D. 1876, and the Independence of the United States the one hundred and second.

[L. S.] EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

U. S. circuit court, eastern district of New York.

MADISON M. CALEB
ag'st
THE STEAMSHIP OTHELLO, IMPLEADED WITH others.

Please to take notice that Thomas Murray, Joseph Henderson, Bernard Brady, Hervey Ellis, John Maginn, and others, who are about to depart from this district to a distance of more than 100 miles from the place of trial of said action, will be examined de bene esse as witnesses on behalf of the claimant, Steamship Othello, in said action, be-
270 fore Edward L. Owen, esq., one of the commissioners of the United States, at his office, No. 71 Wall street, in the city of New York, on the 4th day of September, at 11½ o'clock in the forenoon of said day, at which time and place you are hereby notified to be present, and put interrogatories if you shall see fit.

Yours, &c.,
BEEBE, WILCOX & HOBBS,
Proctors for Claimant Othello.

To C. VAN SANTVOORD, Esq.,
Proctor for Claimant Connecticut.,
A. VAN SANTVOORD, Esq.,
Proctor for Stevens.
JAMES K. HILL,
For Libellant.

Service of a copy of the within notice is hereby admitted this day.
C. VAN SANTVOORD,
Proctor for Connecticut.
ABM. VAN SANTVOORD,
Proctor for Stevens.

271 *Proof of service.*

U. S. circuit court.

MADISON M. CALB
against
THE STEAMSHIP OTHELLO, IMPLEADED with others.

City and County of New York ss:

Oliver Smith, of the city of New York, a clerk in the office of Beebee, Wilcox & Hobbs, being duly sworn, says that upon the 3rd day of

September, A. D. 1877, he served the annexed notice upon James K. Hill, the attorney for the libellants' proctors in the above entitled action, by delivering a copy of said notice to and leaving the same with a clerk in and in charge of the office of said last named attorney, during the absence from said office of said attorney, and between the hours of nine o'clock in the forenoon and six o'clock in the afternoon of said day.

OLIVER B. SMITH.

Sworn to before me this 3rd day of September, 1877.

WM. H. RAFTERY,
Notary Public, N. Y. Co.

272 U. S. circuit court, eastern district of New York.

MADISON M. CALEB, LIBELLANT,
vs.
THE STEAMBOAT OTHELLO, THE STEAMBOAT Connecticut, and others.

SEPTEMBER 24TH, 1877.

HUNT, Justice:

The evidence taken in this court materially alters the aspect of the case. In one view I think its influences is controlling.

The defense of the Connecticut is based chiefly upon the theory that she was engaged in rounding to, for the purpose of landing her tow on the New York side of the East River. This action, it is said, occupied both time and space to a considerable extent. Her purpose, no
273 doubt, was thus to land, and to accomplish it she was justified in taking a proper portion of the stream and for a proper length of time. She was not, however, released from the necessity of care and attention, or from due observance of the rules of navigation.

It is quite clear, from the evidence of her own witnesses, that as the Connecticut passed the Diamond Reef she steamed up the East River in the direction of N.N.E., or thereabouts, parallel to the course of the Othello, which was S.S.W.; that she straightened out her tow; that she was headed towards the Brooklyn shore, and that she thus proceeded for more than a quarter of a mile, this course, and at this point was noted by the Othello, and that vessel then had the right to assume and could act on no other assumption, that the two vessels would pass each other port to port.

If the Connecticut desired that a different course should be
274 taken, it was her duty to give notice to that effect before or, at least, as early as she should begin to change her course. This, according to the evidence of all of her own witnesses, she did not do. Her two blasts were blown until she was above the Coenties Reef, headed directly for the New York side, and her tow tailed out across the river. The Othello was in plain sight of her, and no reason is given why she did not make her signal at an earlier time. It was her duty to do so, and if it had been done we cannot say that the accident would have occurred. Within the well settled rules on the subject this was contributing negligence, rendering her liable for the damage.

I think the officers of the Connecticut, who testified that they did not see the Othello until they were on the upper side of the drilling machine at Coenties Reef, are in error as to time or place. The evi-
275 dence of the officers of the Othello is to the effect that they saw the Connecticut while she was at the Diamond Reef, and when

the Othello was opposite Fulton Ferry she was easily to be seen by the other vessel.

The pilot of the Connecticut testifies that when the whistles were blown the Othello was opposite Fulton Ferry. Her captain testifies that the Connecticut was a hundred feet past the drilling-machine on Coenties Reef heading to the New York shore when he first saw the Othello and blew the whistles. This was within a half a mile of Fulton Ferry. Why was she not seen before? She had been slowly coming down the river for three-eighths of a mile above Fulton Ferry and in plain view of the Connecticut. I think the Othello must have been seen by the officers of the Connecticut at a much earlier time and place than
276 when the latter vessel had passed the drilling-machine on Coenties Reef. If they failed to see her while they were sailing from Diamond Reef to and around Coenties Reef, it is a fault and a negligence as great as not to have given an early notice of an intended change of course. In either view the negligence is manifest.

The negligence of the officers of the Othello is not less evident. The learned judge of the district court was justified, as the evidence was given before him, in holding that the Othello could have passed to the eastward of the tow near to the Brooklyn shore and thus have avoided the danger.

The evidence as since given in the circuit court puts an end to this theory. It is plainly proven that this channel is only about three hundred feet in width, and that with this tow of 1,050 feet extending out past Coenties Reef, an eastward passage was quite impracticable.
277 On this point the new evidence is controlling.

On the other point, however, the fault of Othello is evident. When the Othello reached Fulton Ferry the change of course and position of the Connecticut was beyond doubt; she was heading across to the New York side and then gave the signal to that effect. If we assume, as some of the evidence indicates, that the Othello at this time had proceeded as far as the Wall Street Ferry the case is not altered. The one is a distance of a half, the other of a fourth of a mile from Coenties Reef, and the Othello was at a speed not exceeding four knots per hour.

By experiment actually made on the Othello by the witness Bristow, it appeared that when the ship was at full speed, that is, going at eight knots per hour, it could be brought to a dead stop in five minutes. Without assuming that these proportions can be indefinitely ex-
278 tended, we may assume that if she was going at only half the speed she could be stopped in a shorter time. The witness expressly testifies that under conditions of speed and tide like those existing when the collision occurred she could be brought to a dead stand in four times her length.

According to the view of the testimony most favorable to the Othello, she was opposite Wall Street Ferry when the whistles were blown, one-fourth of a mile from Coenties Reef; that she did not hear or did not regard the signal was a great fault and resulted in the destruction of the canal boat and her cargo.

Both vessels being in fault, there must be an apportionment of the damages, and to this end the decree must be reversed and a reference ordered.

279 United States circuit court, eastern district of New York.

MADISON M. CALEB
vs.
THE STEAMSHIP OTHELLO & OTHERS.

SEPT. 24TH, 1877.

I find the facts in this case to be as follows, viz:

On the morning of August 18th, 1875, the canal boat Sam Morgan, owned by the libellant and laden with a cargo of grain, with other boats, was being towed by the steamer Connecticut, assisted by the tug S. A. Stevens. There were in the tow five tiers of five boats each; the Morgan was the starboard boat in the first or hawser tier; the tow was attached to the Connecticut by a hawser 200–250 long; the entire
280 length of the tow, steamboat hawser and canal boat, 1,050 feet.

At about 5 o'clock in the morning in question the tow on its passage from Albany had reached the Battery in the port of New York on its way to the East River piers; the tide was slightly ebb in the Hudson River, and was young flood in the East River. There were vessels in the harbor which prevented a passage near to the Battery, and the tow passed between Diamond Reef and Governor's Island and about 100 feet southward of the reef. On passing the reef the tow took the centre of the river or nearly so, straightened up its entire length, and heading towards the Brooklyn shore passed above 1,500 feet up the river above Diamond Reef and about 100 feet above the drilling-machine, which
281 was then on Coenties Reef, holding the same general course. The Connecticut then turned westwardly, running across the river pointing towards Wall Street Ferry, on the New York side. She had stopped her engines, but those of the Stevens were at work; she thus passed about seventy-five feet past the drilling-machine towards the New York shore, and while at this point the collision hereafter mentioned occurred.

The drilling machine was opposite Coenties Slip and about six hundred feet from the piers.

Diamond Reef is opposite the NE. end of Governor's Island. At the Coenties Reef the river is about three-quarters of a mile wide.

There are scattering rocks between Diamond Reef and Governor's Island which render it unsafe for a vessel like the Othello to attempt the passage between them.

There is a sand spit along the Brooklyn shore running down
282 to Governor's Island and extending above the Coenties Reef.

There is a ship channel between Coenties Reef and Diamond Reef, and it is the only channel for a vessel of the size and draft of the Othello.

From pier 44, East River, to Diamond Reef is one mile and three-eighths.

From Fulton Ferry to Diamond Reef is about one mile.

From Wall St. Ferry to Diamond Reef is about one-half mile.

From Wall St. Ferry to Coenties Reef is about one-fourth of a mile.

From Fulton Ferry to Coenties Reef is one-half mile.

From Coenties Reef to Diamond Reef is about one half mile.

At about 5 o'clock on the morning in question the steamship Othello left her dock at pier 44, East River, on one of her regular trips to Hull, England. After getting headed down the river, she took a
283 course about in the middle of the river. Above Fulton Ferry her pilot saw the Connecticut, then in the vicinity of Diamond

Reef, well on his port hand. The Othello and Connecticut were then on courses that, if continued, they would have passed each other port to port, three hundred feet apart. The Othello maintained her course, heading for between Coenties and Diamond Reef, and so as to clear the former reef to the southward from 200 to 300 feet, which was the usual and proper course for steamers of her class. She was running half speed, or about four knots an hour. She was in charge of a licensed Sandy Hook pilot, who stood on the forward bridge. When the Othello reached a point in the river near to the Coenties Reef, the Connecticut had passed on her course so far as to avoid collision, but the
284 Othello came in collision with the Sam Morgan, being the starboard boat in the first tier of the tow of the Connecticut, cut her in two and sunk her. The boat and the cargo were entirely destroyed.

I find further, as matter of fact, that the Connecticut gave a signal by two blasts of her engine that she wished the Othello to pass to her starboard, but that she did not give such signal until she had headed into the New York shore and was north of Coenties Reef, and her tow was straightened out at length the whole length of steamboat hawsers and tows, extending over a space in the river of one thousand and fifty feet, and that by reason of the space thus occupied by the Connecticut and her tow, there was no channel left on the Brooklyn side of the river which the Othello could take with safety. At the time the signal
285 of two blasts was given by the Connecticut, the Othello was at least one-fourth of a mile from the Connecticut, and if proper care and attention had been given, the persons navigating the Othello would have heard the said signal.

I further find that if the engine of the Othello had been reversed immediately upon making the signal of two blasts by the Connecticut, her headway could have been entirely checked before reaching the tow, and the collision which did occur could and would have been avoided, but that her engines were not so reversed until the Othello were within one-eighth of a mile from said tow, and too late to prevent a collision.

I find that the Connecticut was guilty of negligence in changing her course, as hereinbefore stated, without giving earlier notice of her intention to do so than she did give, and in occupying, without no-
286 tice, 1,050 feet of the river under the circumstances stated.

I find that the Othello was guilty of negligence in not hearing or heeding the signal of the Connecticut of two blasts of her whistle, and in not reversing her engines sooner than she did.

I find that neither the Connecticut nor the Othello was free from fault, and that the loss of the canal boat Sam Morgan resulted from the concurring negligence of the said steamers.

As a conclusion of law I find and decide that the judgment of the district court must be reversed and a decree for the loss incurred entered against both of said vessels, and the damages apportioned as is by law in such cases provided.

Let a decree be entered accordingly.

WARD HUNT
Asso. Justice Sup. Ct U. S.

287 At a stated term of the circuit court of the United States of America, for the eastern district of New York, in the second circuit, held at the United States court-rooms, in the city of Brooklyn, on the 13th day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

Present, Hon. Ward Hunt, associate justice of the Supreme Court of the United States.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAMBOAT CONNECTICUT, HER ENGINE, &c., Schuyler's Steam Tow Boat Line, claimant and appellee; the steam tow boat S. A. Stevens, her engine, &c., William H. Foote and Samuel Schuyler, claimants and appellees; the steamship Othello, her engine, &c., Charles Wilson and Arthur Wilson, claimants and appellants.

288 This cause having been heard upon the appeal of the claimants of the steamship Othello from the final decree of the district court of the United States for the eastern district of New York, entered or bearing date the twenty seventh day of November, 1876, or so much thereof as condemns the said steamship Othello to pay the libellant's claim for damages with costs, and upon the appeal of the libellant from so much of said final decree of the said district court as dismisses the libel against the steamboat Connecticut, and upon the appeal of the libellant from so much of said final decree of said district court as dismisses the libel against the steamboat S. A. Stevens, and upon the pleadings and proofs, and having been argued and submitted by the advocates of the respective parties, and due deliberation having been had in the premises, it is now ordered and adjudged, and decreed
289 by this court, that so much of said decree of said district court, entered or bearing date the twenty-seventh day of November, 1876, as orders and adjudges that the libel be dismissed, as against the steamboat Connecticut, with costs, and that her claimant recover its costs as taxed against said libellant, and also so much of said decree of said district court as orders and adjudges that the steamship Othello, her engine, &c., be condemned for the payment of damages and costs as therein provided, and for the recovery thereof by the libellant against said steamship Othello, her engine, &c., as the sole party in fault for the collision in the pleadings mentioned, be and the same is hereby reversed, and it is further ordered, adjudged, and decreed, pursuant to the findings of facts and conclusions of law as found by this court, that the libellant recover the damages by him sustained, by reason of the
290 matters alleged in the libel herein against the said steamboat Connecticut, her engines, &c., or her claimant, and said steamship Othello, her engine, &c., or her claimant, as caused by the concurrent negligence of said steamboat Connecticut and steamship Othello, to be apportioned between them in equal portions.

And it is further ordered that it be referred to B. L. Benedict, one of the commissioners of this court, to ascertain the amount due to the libellant, and *and* report thereon to this court with all convenient speed.

And it is further ordered that so much of said decree of the district court as dismisses the libel with costs as against said steamboat S. A. Stevens, her engine, &c., be affirmed with costs, and that her claimants, William H. Foote and Samuel Schuyler, recover against the libellant their costs as taxed in said district court, with the interest thereon, together with their costs to be taxed in this court, and that the decree therefor be entered with the decree against the steamboat
291 Connecticut and steamship Othello, on the coming in of the commissioner's 1. report.

And it is further ordered that the question of cost be reserved for the coming in of the commissioner's report, except as to the S. A. Stevens.

WARD HUNT,
Asso. Just. Sup. Ct. U. S.

(Endorsed:) Interlocutory decree. Filed and entered this 23rd day of October, 1877.

292 United States circuit court, eastern district of New York.

M. M. CALEB
vs.
THE STEAMBOATS CONNECTICUT AND S. A. Stevens, and the steamship Othello, &c.

To the honorable Ward Hunt, associate justice of the Supreme Court of the United States:

In pursuance of a decretal order of reference, made and entered in the above-entitled cause, by which it was referred to one of the commissioners of this court to ascertain the damages apportioned therein, and report thereon to the court, I, B. Lincoln Benedict, United States commissioner, to whom the matter was referred, do respectfully report, that I have been attended on such reference by the proctors for
293 all parties, and have taken and examined the proofs offered in evidence, and thereupon find the amount of the damages, with interest, reported to the district court in the above-entitled cause to be the sum of $15,014.76. Interest @ 6% from Nov. 27, '76, to date, $848.18, amounting to $15.862.94, the half-sum of which, according to the apportionment of the decree, is the amount of seven thousand nine hundred) and thirty-one $\frac{47}{100}$ dollars ($7,931.47.)

The following is the computation by items:

Libellant's boat	$2,500	
Interest to Nov. 26, '76	168 75	
	2,668 75	
Interest to Nov. 5, 1877	150 70	
		$2,819 45
Cargo	10,549 00	
Interest to Nov. 26, '76	712 06	
	11,261 06	
Interest to Nov. 5, '77	636 12	
		11,897 18
Freight	616 00	
Interest to Nov. 26, '76	41 58	
	657 58	
294	657 58	
Interest to Nov. 5, '77	37 20	
		694 78
Hall's effects	350 00	
Interest to Nov. 26, '76	23 62	
	373 62	
Interest to Nov. 5, '77	21 10	
		394 72

Roosevelt's effects	50 00	
Interest to Nov. 26, '76	3 75	
	53 75	
Interest to Nov. 5, '77	3 06	56 81
Total		15,862 94

½=$7,931 47.

All which is respectfully submitted.
Dated Nov. 5, 1877.

B. LINCOLN BENEDICT,
U. S. Commissioner.

(Endorsed:) Commissioner's report. Presented November 6th, 1877.

295 At a stated term of the circuit court of the United States for the eastern district of New York, in the second circuit held at the United States court rooms in the city of Brooklyn, on the 22nd day of November, in the year of our Lord one thousand eight hundred and seventy-seven:

Present Hon. Ward Hunt, associate justice of the Supreme Court of the United States.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAMBOAT CONNECTICUT, HER ENGINE, &C., Schuyler's Steam Tow-boat Line, claimant and appellee, steam tow-boat S. A. Stevens, her engine, &c., William H. Foote and Samuel Schuyler, claimants and appellees, and the steamship Othello, her engine, &c., Charles Wilson and Arthur Wilson, claimants and appellees.

This cause having been heard upon the appeal of the claimants of the steamship Othello from the final decree of the district
296 court of the United States of America for the eastern district of New York, entered or bearing date the twenty-seventh day of November, 1876, or so much thereof as condemned the said steamship Othello to pay the libellant's claim for damages with costs; and upon the appeal of the libellant from so much of said final decree of the said district court as dismisses the libel against the steamboat Connecticut; and upon the appeal of the libellant from so much of said final decree of said district as dismisses the libel against the steamboat S. A. Stevens, and upon the pleadings and proofs, and having been argued and submitted by the advocates of the respective parties, and due deliberation having been had in the premises, it is now ordered, adjudged, and decreed by this court, pursuant to the tenor of the interlocutory decree, made and entered in this court, bearing date the 13th day of October, A. D. 1877, that so much of said decree of said district court, entered or bearing date the twenty-seventh day of November, 1876, as
297 orders and adjudges that the libel be dismissed as against the steamboat Connecticut, with costs, and that her claimant recover its costs as taxed against said libellant, and also, so much of said decree of said district court as orders and adjudges that the steamship Othello, her engine, &c., be condemned for the payment of damages and costs, as therein provided, and for the recovery thereof by the li-

bellant against said steamship Othello, her engine, &c., as the sole party in fault for the collision in the pleadings mentioned be, and the same is hereby, reversed.

And it is further ordered, adjudged, and decreed, pursuant to the findings of fact and conclusions of law, as found by this court, that the libellant recover the damages by him sustained by reason of the matters alleged in the libel herein against the said steamboat Connecticut, her engine, &c., or her claimant, and said steamship Othello, her engine, &c., or claimant, as caused by the concurrent negligence of said steam-
298 boat Connecticut and steamship Othello, to be apportioned between them in equal portions.

And the report of the commissioner to whom it was referred to ascertain and report the amount of the damages sustained by the libellants from the collision in the pleadings mentioned, bearing date the 5th day of November, 1877, having been presented to this court and filed, from which it appears that said damages, with interest to the date of the report, amount to the sum of fifteen thousand eight hundred and sixty-two $\frac{94}{100}$, and no exceptions having been filed thereto, and the time for filing exceptions having expired,

Now, on motion of James K. Hill, proctor for said libellant, it is ordered, adjudged, and decreed that said report be and the same is hereby confirmed.

And it is further ordered, adjudged, and decreed that the libellant, Madison M. Caleb, recover from the steamboat Connecticut, her
299 engine, &c., or her said claimant, and said steamship Othello, her engine, &c., or her said claimant, the sum of fifteen thousand eight hundred and sixty-two and $\frac{94}{100}$ dollars for his damages, as reported by said commissioner's report, with the interest thereon from the date of said report, amounting to the sum of fifteen thousand eight hundred and ninety-four $\frac{66}{100}$ dollars, together with the sum of eight hundred and sixty-nine $\frac{52}{100}$ dollars, amount of his costs as taxed in the district and circuit courts, in all amounting to the sum of sixteen thousand seven hundred and sixty-four $\frac{25}{100}$ dollars, which is adjudged to said libellants by the decree of this court against said steamboat Connecticut, and steamship Othello.

And it is further ordered, adjudged, and decreed that as between the respective claimants of the steamboat Connecticut and the steamship Othello, the said amount of damages, interest, and costs so ad-
300 judged to said libellant, with the accruing interest and charges, are to be, and the same are hereby, ordered, adjudged, and decreed to be apportioned and paid by the said respective claimants in equal parts, that is to say, the said steamboat Connecticut, or her claimant, or sureties, are to pay eight thousand three hundred and eighty-two $\frac{12}{100}$ dollars, one-half thereof, with one half accruing interest and charges, and said steamship Othello, or her claimants, or sureties, are to pay eight thousand three hundred and eighty-two $\frac{12}{100}$ dollars, one-half thereof with one-half accruing interest and charges.

And it is further ordered, adjudged, and decreed that upon the payment, by either the claimant of said steamboat Connecticut or the claimants of said steamship Othello, of one-half of said amount of damages and costs, and interest with accruing interest, and charges thereon to the date of such payment, the proceedings of the libellant be stayed as to such vessel, her claimant and sureties, for the collection of the residue until the return, by the marshal, of an execution unsatisfied against the claimant or claimants of the other vessel for the other half part
301 of said amount, or until it shall otherwise appear that said libellant is unable to enforce or collect the other half part of said

amount of damages, costs, and interest, with accruing interest and charges against the claimant of the other vessel, or their sureties, by proceedings in this court. And any of the parties are to be at liberty to apply to this court, if occasion shall require, touching the enforcement of this decree.

And it is further ordered, adjudged, and decreed, pursuant to the provisions in that behalf in said interlocutory decree made and entered in this court, bearing date 13th October, 1877, that so much of said decree of the district court as dismisses the libel with costs as against said steamboat S. A. Stevens, her engine, &c., be affirmed with costs, and that her claimants, William H. Foote and Samuel Schuyler, recover against the libellants their costs, as taxed in said district court, amounting to seventy-four and $\frac{27}{100}$ dollars, with the interest thereon from Nov.
302 27th, 1876, amounting to four $\frac{34}{100}$ dollars, together with their costs, as taxed in this court, forty-one and $\frac{22}{100}$ dollars, in all amounting to one hundred and nineteen $\frac{83}{100}$ dollars.

And on motion of the proctor for the libellant is is further ordered that unless an appeal be taken from the said decree as against the said steamboat Connecticut, or her claimant, or as against said steamship Othello, or her claimants, within the time limited by law and the rules and practice of the court, so as to operate as a supersedeas, that the stipulations for costs and value on the part of the claimants so not appealing cause the engagement of their stipulations to be performed, or show cause why execution should not be issued against them to enforce satisfaction of the decree.

WARD HUNT,
Asso. Just. Sup. C't U. S.

(Endorsed:) Final decree, filed & entered November 24th, 1877.

303 *Bill of exceptions.*

U. S. circuit court for the eastern district of New York, in the second circuit.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAM TOW BOAT CONNECTICUT, HER engines, &c., Schuyler's steam tow-boat Line, claimant and appellee, the steam towboat S. A. Stevens, her engine, &c., William H. Foote and Samuel Schuyler, claimants and appellees, the steamship Othello, her engines, &c., Charles Wilson and Arthur Wilson, claimants and appellants.

This cause came on to trial before the Hon. Ward Hunt, associate justice of the Supreme Court of the United States, at a term of the circuit court of the United States in and for the eastern district of New
304 York, in the second circuit, on the eleventh day of September, A. D. 1877, on the appeal, by the libellant, from so much of the final decree of the district court of the United States for the eastern district of New York as dismisses the libel against the steamboat Connecticut, with costs; the appeal of the libellant from so much of said final decree as dismisses the libel against the steamboat S. A. Stevens;

and the appeal, by the claimants of the steamship Othello, from the final decree, or so much thereof as condemns the said steamship to pay the libellant's claim for damages with costs.

The counsel for the libellant read the libel and the counsel for the respective claimants of the Othello, the Connecticut, and Stevens read their respective answers as contained in the apostles or record transmitted from the district to the circuit court.

Counsel for the respective parties read the testimony taken and the depositions read on the trial in the district court as contained in
305 said apostles, counsel for each party reading the testimony taken and the depositions read on its own behalf; counsel for libellant reading also the testimony of the witnesses on behalf of the Starbuck, as contained in the record; the party on whose behalf the testimony was taken or read, whether oral or by deposition, reading the direct, and counsel for the other parties reading the cross.

Counsel for claimants of the Othello offered and read in evidence, on its behalf, the testimony of John Maquin, John Henry Alice, Bernard Brady, Joseph Henderson, taken on its behalf on appeal in the circuit court, as contained in their depositions on file in the circuit court, and as it appears upon the record of such testimony hereto annexed; counsel for said claimants reading the direct, and the counsel for the claimant of the Connecticut reading the cross examination.

306 The counsel for the Othello here offered and put in evidence the pilot rules for lakes and seaboard prescribed by the board of supervising inspectors, as amended January, 1875, and as contained in , to which reference is had for their contents.

The counsel for the Othello moved to strike out as not admissible evidence of the facts therein stated the testimony in the redirect examination of George M. Townade to a conversation with Captain Brandon, of the Starbuck (folio 425); and also the testimony of Jacob Brandon of the Starbuck to what the pilot of the Othello told him and what he replied (folio 644); and the judge, holding that the same were not evidence of the facts therein stated, granted the motion, counsel for claimant of the Connecticut not opposing.

And here the testimony was closed, the above containing all the evidence that was put in on the question of fault for the collision.

307 The counsel for the claimant of the Connecticut thereupon proposed on its behalf the following statement of facts and conclusions of law to be found by the court as matters of fact:

FINDINGS OF FACT.

I. The date of the collision in the pleadings mentioned was early on Wednesday morning, and its place was in the port of New York in the lower reach of the East River, of which the general direction, as represented on the Coast Survey maps, is northeast and southwest, and on the New York side of it off New York East River pier 7, or thereabouts; the Connecticut, with her tow being bound for down along the piers inside (New York side) of a drilling machine then on Coenties Reef, so called, which was about 600 feet out in the river from the ends of the piers, to land her boats. The Othello, after being hauled out from pier No. 44, East River, on the New York shore, in the upper reach of the river above the Brooklyn ferry slip of the Fulton Ferry, of which the direction is very nearly due east and west, and after her bow was pulled around down the river in that reach by a line from the tugboat Starbuck, was bound down through the lower reach on a voyage to Hull, England.

II. The Connecticut, on a passage with a tow from Albany, which she had departed from on the afternoon of Monday, the 16th August, arrived off the Battery at the lower end of the city, off on the North River side, about 5 o'clock in the morning of Wednesday, 18th August, 1875, with the boats which she had remaining in her tow which were bound to their landing places on the East River, between piers 2 and 9 East River, in the harbor of New York, in all 25 boats or less, towed by hawsers from stern of Connecticut, arranged in 5 rows or tiers of 5 boats abreast, so far as full, including libellant's boat Sam Morgan, which was in the head tier, starboard side.

Before coming down to off the Battery, when about off Bull's Ferry, the hawsers by which the boats aft were towed were shortened, as usual, to secure better control of the boats towed, and the Connecticut was joined by the steam-tug Sarah A. Stevens when off pier two, North River, as a helper to assist the Connecticut with her tow on going round into the East River, and on coming round into the East River the Stevens was on her starboard side to help direct the steerage and course of the Connecticut and her tow.

Before and when the Connecticut with her tow was going round into the East River the tide in the North River was toward the last of the ebb, and the tide in the East River was beginning to run flood; there was no wind of any consequence; what there was was from the northeast; the weather was clear, and it was broad daylight.

308 As the Connecticut was about going into the East River, finding vessels at anchor on the upper side of the entrance, under the south end of the Battery, she took a course which was entirely free from obstructions to pass into the river on the southerly side of the entrance, between Governor's Island and New York, and to the southward of the buoy on Diamond Reef, so called, off Governor's Island, circling in toward and round that buoy, and on turning it, shaping her course with her tow behind her, up the river and in toward New York, bearing for a point to the southward and eastward of and distant about 100-150 feet from the drilling machine on Coenties Reef, in order as a necessary precaution for the safety of the boats in her tow in landing them at the piers on the inside (New York side) of this drilling machine to turn herself round the drilling machine so as to bring her tow head to the tide before proceeding down inside by the turning of the steamboat with the aid of the flood tide in co-operation.

Arrived off this drilling machine, as aforesaid, the Connecticut's engine was stopped while the S. A. Stevens, attached by lines to the Connecticut's starboard side, worked ahead to turn Connecticut's bow around to inside of the drilling machine, and so to bring the tow round with the help of the action of the tide on the tow.

As soon as or shortly after Connecticut's engine was stopped, while the Stevens was working ahead, and the tow was slowly moving up on the tide, the steamship passing down from the upper into the lower reach, and then off the Brooklyn Ferry slip of the Fulton Ferry, and at a distance higher up the river of about three-quarters of a mile, and off to starboard of the Connecticut, and near or nearer to the Brooklyn shore, was observed from the Connecticut, and immediately two blasts of the steam whistle of the Connecticut were blown, as a signal to the steamship to pass off to eastward, or astarboard of Connecticut, for which movement of the steamship there was abundant time and room and sufficient depth of water. No answer was made nor attention given to this signal by the steamship, which made a course from further to eastward, to one inclining in toward or nearer the New York shore ,

toward the Connecticut's tow, and then an alarm signal was blown by three blasts of the steam whistle of the Connecticut, the steamship at that time being about half way between, off Fulton Ferry and the place of the Connecticut and tow.

Without answering this second signal, or any attention to the presence of the Connecticut and tow, the steamship continued going ahead, bearing directly on to the boats in tow of the Connecticut, without any stopping or backing of her engine, until within about her length and a half, or about four hundred to five hundred feet, too near by stopping and backing to avoid a collision, which followed with such force as to drive her stem nearly through the canal-boat Morgan, in the head tier of the tow, and to cause her to sink with her cargo of grain.

The Othello had been lying on the easterly side of pier 44, on the New York side of the upper reach of the river, three or more blocks above the New York slip of the Catherine Ferry, stem in and stern
309 out, and she backed out with her own steam, the tug Starbuck having a line to her port quarter to keep her stern up the river; and after backing out, the Starbuck took a hawser from steamship's bow and pulled it round down the river, and then cast off, and the steamship started ahead, moving very slow in getting under way in the upper reach of the river.

On and after the steamship was headed down the river, and as she was getting under way, and thereafter, she had the lower reach of the river, where the Connecticut and her tow were in plain sight.

The Connecticut there, as the steamship was passing down from this upper reach, was not bound up the river, nor on an opposite or parallel course, to pass off to port of the steamship, nor crossing from such course, but was slowly rounding to in toward New York, to land her boats from a distance below so far off as to involve no risk of collision if the steamship had been properly navigated, and thereafter was stopped in the act of turning the drilling machine in plain sight before the steamship had passed down the river in any such close proximity as to involve risk of collision, if the steamship had been properly or carefully navigated.

With any reasonable look out or sufficient observation of the Connecticut, when or after the steamship was headed down and getting under way, or passing into the lower reach of the river, or when the Connecticut was first sighted from the steamship at a distance off of a mile or more, it could and would have been seen that the Connecticut had boats in tow; that she was not bound up the river nor on an opposite or parallel course, to pass off to port of the steamship, as seems to have been assumed by the steamship's pilot, through careless or insufficient observation, but was rounding to in toward New York to land her boats; and thereafter, and before any dangerous proximity that the Connecticut was engaged in the necessary and difficult manœuvre to bring her tow round, in order to effect such landing.

III. The Connecticut was not in fault in turning the buoy as she did, nor in rounding to in towards New York, to land her boats, nor in her manœuvre to bring the boats in her tow round head to the tide, before passing down inside of the drilling machine, as, and when she was performing it, nor is any other fault in her navigation or proceeding imputable to her.

IV. That the sole cause of the collision and of the damage arising therefrom, was the negligent navigation of the steamship Othello in not keeping a sufficient lookout, in not responding to nor heeding the signals from the Connecticut, and in not passing to eastward, between the

tow and the Brooklyn shore, or stopping and reversing in season to avoid the collision.

310 AS CONCLUSIONS OF LAW.

I. The decree condemning the Othello in damages and costs should be affirmed, with costs in this court.

II. At all events so much of the decree as adjudges that the libel filed in the action as against the steamboat Connecticut be dismissed with costs, and that the claimant of the Connecticut recover against the libellant its costs as taxed in the district court, should be affirmed with costs in this court.

The judge thereafter, and after time taken for consideration, filed with *with* the clerk of the circuit court findings of fact and conclusions of law as found by the court, of which the following is a copy:

311 United States circuit court, eastern district of New York.

MADISON M. CALEB
vs.
THE STEAMSHIP OTHELLO & OTHERS.

SEPT. 24TH, 1877.

I find the facts in this case to be as follows, viz:

On the morning of August 18th, 1875, the canal-boat Sam Morgan, owned by the libellant, and laden with a cargo of grain, with other boats, was being towed by the steamer Connecticut assisted by the tug S. A. Stevens.

There were in the tow five tiers of five boats each. The Morgan was the starboard boat in the first or hawser tier.

The tow was attached to the Connecticut by a hawser 200–250
312 long. The entire length of the tow, steamboat, hawser, and canal-boat, 1,050 feet. At about 5 o'clock on the morning in question the tow, on its passage from Albany, had reached the battery in the port of New York, on its way to the East River piers.

The tide was slightly ebb in the Hudson River, and was young flood in the East River. There were vessels in the harbor, which prevented a passage near to the Battery, and the tow passed between Diamond Reef and Governor's Island, and about 100 feet southward of the reef. On passing the reef the tow took the centre of the river, or nearly so, straightened up its entire length, and heading towards the Brooklyn shore, passed above 1,500 feet up the river above Diamond Reef, and about 100 feet above the drilling-machine which was then on Coenties Reef, holding the same general course.

313 The Connecticut then turned westwardly, running across the river, pointing towards Wall Street Ferry, on the New York side. She had stopped her engines, but those of the Stevens were at work. She thus passed about seventy-five feet past the drilling-machine, towards the New York shore, and while at this point the collision hereafter mentioned occurred.

The drilling-machine was opposite Coenties Slip, and about six hundred feet from the piers.

Diamond Reef is opposite the N. E. end of Governor's Island.

At the Coenties Reef the river is about three-quarters of a mile wide.

There are scattering rocks between Diamond Reef and Governor's

Island, which render it unsafe for a vessel like the Othello to attempt the passage between them.

There is a sand spit along the Brooklyn shore running down
314 to Governor's Island and extending above the Coenties Reef.

There is a ship channel between Coenties Reef and Diamond Reef and it is the only channel for a vessel of the size and draft of the Othello.

From pier 44 East River to Diamond Reef is one mile and three-eighths.

From Fulton Ferry to Diamond Reef is about one mile.

From Wall St. Ferry to Diamond Reef is about one-half mile.

From Wall St. Ferry to Coenties Reef is about one-fourth of a mile.

From Fulton Ferry to Coenties Reef is one-half mile.

From Coenties Reef to Diamond Reef is about one-half mile.

At about 5 o'clock on the morning in question, the steamship Othello left her dock at pier 44 East River, on one of her regular trips to
315 Hull, England. After getting headed down the river, she took a course about in the middle of the river, above Fulton Ferry her pilot saw the Connecticut, then in the vicinity of Diamond Reef, well on his port hand. The Othello and Connecticut were then on courses that if continued, they would have passed each other port to port, three hundred feet apart. The Othello maintained her course heading for between Coenties and Diamond Reef, and so as to clear the former reef to the southward from 200 to 300 feet which was the usual and proper course for steamers of her class. She was running half speed or about four knots an hour. She was in charge of a licensed Sandy Hook pilot, who stood on the forward bridge.

When the Othello reached a point in the river near to the Coenties Reef the Connecticut had passed on her course so far as to avoid col-
316 lision, but the Othello came in collision with the Sam Morgan, being the starboard boat in the first tier of the tow of the Connecticut, cut into her in too and sunk her. The boat and the cargo were entirely destroyed.

I find further, as matter of fact, that the Connecticut gave a signal by two blasts of her engine, that she wished the Othello to pass to her starboard, but that she did not give such signal until she had headed into the New York shore and was north of Coenties Reef and her tow was straightened out at length the whole length of steamboat hawsers and tows extending over a space in the river of one thousand and fifty feet, and that by reason of the space thus occupied by the Connecticut and her tow there was no channel left on the Brooklyn side of the river which the Othello could take with safety.

At the time the signal of two blasts was given by the Connec-
317 ticut the Othello was at least one-fourth of a mile from the Connecticut, and if proper care and attention had been given the persons navigating the Othello would have heard the said signal.

I further find that if the engine of the Othello had been reversed immediately upon making the signal of two blasts by the Connecticut, her headway could *of* been entirely checked before reaching the tow and the collision which did occur could and would have been avoided, but that her engines were not so reversed until the Othello were within one-eighth of a mile from said tow and too late to prevent a collision.

I find that the Connecticut was guilty of negligence in changing her course as hereinbefore stated without giving earlier notice of her intention to do so than she did give and in occupying without notice
318 1,050 feet of the river under the circumstances stated.

I find that the Othello was guilty of negligence in not hearing or heeding the signal of the Connecticut of two blasts of her whistle and not reversing her engines sooner than she did.

And that neither the Connecticut nor the Othello were free from fault, and that the loss of the canal-boat Sam Morgan resulted from the concurring negligence of the said steamers.

As a conclusion of law I find and decide that the judgment of the district court must be reversed, and a decree for the loss incurred entered against both of said vessels and the damages apportioned, as is by law in such cases provided.

Let a decree be entered accordingly.

WARD HUNT,
Asso. Justice Sup. Ct. U S.

319 And also filed with said clerk his opinion, as follows:

320 U. S. circuit court eastern district of New York.

MADISON M. CALEB, LIBELLANT
vs.
THE STEAMBOAT OTHELLO, THE STEAMBOAT Connecticut, and others.

SEPTEMBER 24TH, 1877.

HUNT, *Justice:*

The evidence taken in this court materially alters the aspect of the case. In one view I think its influences is controlling.

The defense of the Connecticut is based chiefly upon the theory that she was engaged in rounding to for the purpose of landing her tow on the New York side of the East River. This action it is said occupied both time and space to a considerable extent. Her purpose, no
321 doubt, was thus to land, and to accomplish it she was justified in taking a proper portion of the stream and for a proper length of time. She was not, however, released from the necessity of care and attention, or from due observance of the rules of navigation.

It is quite clear from the evidence of her own witnesses that as the Connecticut passed the Diamond Reef she steamed up the East River in the direction of N. N. E., or thereabout, parallel to the course of the Othello, which was S. S. W. That she straightened out her tow, that she was headed towards the Brooklyn shore and that she thus proceeded for more than a quarter of a mile; this course and at this point was noted by the Othello, and that vessel then had the right to assume and could act in no other assumption that the two vessels would pass each other port to port.

If the Connecticut desired that a different course should be
322 taken it was her duty to give notice to that effect before or at least as early as she should begin to change her course. This according to evidence of all of her own witnessss she did not do. Her two blasts were blown until she was above the Coenties Reef headed directly for the New York side and her tow tailed out across the river. The Othello was in plain sight to her and no reason is given why she did not make her signal at an earlier time.

It was her duty to do so and if it had been done we cannot say that the accident would have occurred. Within the well settled rules on the subject this was contributing negligence rendering her liable for the damage.

I think the officer of the Connecticut who testified that they did not see the Othello until they were in the upper side of the drilling-machine at Coenties Reef are in error as to time or place. The evi-
323 dence of the officers of the Othello is to the effect that the Connecticut while she was at the Diamond Reef and when the Othello was opposite Fulton Ferry. She was easily to be seen by the other vessel.

The pilot of the Connecticut testifies that when the whistles were blown the Othello was opposite Fulton Ferry. Her captain testifies that the Connecticut was a hundred feet past the drilling-machine on Coenties Reef, heading to the New York shore, when he first saw the Othello and blew the whistles. This was within a half a mile of Fulton Ferry.

Why was she not seen before? She had been slowly coming down the river for three-eighths of a mile above Fulton Ferry, and in plain view of the Connecticut. I think the Othello must have been seen by the officers of the Connecticut at a much earlier time and place than
324 when the latter vessel had passed the drilling-machine on Coenties Reef. If they failed to see her while they were sailing from Diamond Reef to and around Coenties Reef, it is a fault and a negligence as great as not have given an early notice of an intended change of course. In either view the negligence is manifest.

The negligence of the officers of the Othello is not less evident. The learned judge of the district court was justified, as the evidence was given before him, in holding that the Othello could have passed to the eastward of the tow near to the Brooklyn shore and thus have avoided the danger.

The evidence, as since given in the circuit court, puts an end to this theory. It is plainly proven that this channel is only about three hundred feet in width, and that with this tow of 1,050 feet extending out past Coenties Reef, an eastward passage was quite impracticable.
325 On this point the new evidence is controlling.

On the other point, however, the fault of Othello is evident. When the Othello reached Fulton Ferry the change of course and position of the Connecticut was beyond doubt. She was heading across to the New York side, and then gave the signal to that effect. If we assume, as some of the evidence indicates, that the Othello at this time had proceeded as far as the Wall Street Ferry the case is not altered. The one is a distance of a half, the other of a fourth of a mile from Coenties Reef, and the Othello was at a speed not exceeding four knots per hour.

By experiment actually made on the Othello by the *the* witness Bristow, it appeared that when the ship was at full speed—that is, going at eight knots per hour—it could be brought to a dead stop in five minutes. Without assuming that these proportions can be indefinitely ex-
326 tended, we may assume that if she was going at only half the speed she could be stopped in a shorter time. The witness expressly testifies that under conditions of speed and tide like those existing when the collision occurred she would be brought to a dead stand in four times her length.

According to the view of the testimony most favorable to the Othello, she was opposite Wall Street Ferry when the whistles were blown, one-fourth of a mile from Coenties Reef. That she did not hear or did not regard the signal was a great fault, and resulted in the destruction of the canal-boat and her cargo.

Both vessels being in fault, there must be an apportionment of the

damages; and to this end the decree must be reversed and a reference ordered.

327 And thereafter, upon notice thereof, and before judgment or decree thereon, the counsel for the claimant of the Connecticut filed in the office of the clerk of said court, and served upon the libellant's counsel and the counsel for the Othello, a proposed bill of exceptions containing the following exceptions:

FIRST EXCEPTION.—For that the judge did not find, as matters of fact, as proposed by the claimant of the Connecticut on the trial, as follows:

I. The date of the collision in the pleadings mentioned was early on Wednesday morning, and its place was in the port of New York, in the lower reach of the East River, of which the general direction, as represented on the Coast Survey maps, is northeast and southwest, and on the New York side of it, off New York East River pier 7, or thereabouts; the Connecticut, with her tow, being bound for down along the piers inside (New York side) of a drilling machine then on Coenties Reef, so called, which was about 600 feet out in the river from the ends of the piers, to land her boats. The Othello, after being hauled out from pier No. 44, East River, on the New York shore, in the upper reach of the river, above the Brooklyn Ferry slip of the Fulton Ferry, of which the direction is very nearly due east and west, and after her bow was pulled round down the river in that reach by a line from the tugboat Starbuck, bound down was through the lower reach on a voyage to Hull, England.

328 II. The Connecticut, on a passage with a tow from Albany, which she had departed from on the afternoon of Monday, the 16th August, arrived off the Battery at the lower end of the city, off on the North River side, about 5 o'clock in the morning of Wednesday, 18th August, 1875, with the boats which she had remaining in her tow, which were bound to their landing places on the East River, between piers 2 and 9 East River, in the harbor of New York, in all 25 boats, or less, towed by hawsers from stern of Connecticut, arranged in 5 rows or tiers of 5 boats abreast, so far as full, including the libellant's boat, Sam Morgan, which was in the head tier, starboard side.

Before coming down to off the Battery, when about off Bull's Ferry, the hawsers by which the boats aft were towed were shortened, as usual, to secure better control of the boats towed, and the Connecticut was joined by the steam tug Sarah A. Stevens, when off pier two, North River, as a helper to assist the Connecticut with her tow on going round into the East River; and on coming round into the East River the Stevens was on her starboard side, to help direct the steerage and course of the Connecticut and her tow.

Before and when the Connecticut with her tow was going round into the East River, the tide in the North River was toward the last of the ebb, and the tide in the East River was beginning to run flood; there was no wind of any consequence; what there was was from the northeast; the weather was clear, and it was broad daylight.

As the Connecticut was about going into the East River, finding vessels at anchor on the upper side of the entrance, under the south end of the Battery, she took a course which was entirely free from obstructions to pass into the river on the southerly side of the entrance, between Governor's Island and New York, and to the southward of the buoy on Diamond Reef, so called, off Governor's Island, circling in toward and round that buoy, and on turning it, shaping her course, with her tow behind her, up the river and in toward New York, bearing for

a point to the southward and eastward of, and distant about 100 to 150 feet from, the drilling machine on Coenties Reef, in order, as a necessary precaution for the safety of the boats in her tow in landing them at the piers on the inside (New York side) of this drilling machine, to turn herself round the drilling machine, so as to bring her tow-head to the tide before proceeding down inside by the turning of the steamboat with the aid of the flood-tide in co-operation.

Arrived off this drilling machine, as aforesaid, the Connecticut's engine was stopped, while the S. A. Stevens, attached by lines to the Connecticut's starboard side, worked ahead to turn Connecticut's bow around to inside of the drilling machine, and so to bring the tow round with the help of the action of the tide on the tow.

As soon as, or shortly after, Connecticut's engine was stopped, while the Stevens was working ahead, and the tow was slowly moving up on the tide, the steamship passing down from the upper into the lower reach, and then off the Brooklyn Ferry slip of the Fulton Ferry, and at a distance higher up the river of about three-quarters of a mile, and off to starboard of the
329 Connecticut, and near or nearer to the Brooklyn shore, was observed from the Connecticut, and immediately two blasts of the steam whistle of the Connecticut were blown, as a signal to the steamship to pass off to eastward, or a-starboard of Connecticut; for which movement of the steamship there was abundant time and room and sufficient depth of water. No answer was made nor attention given to this signal by the steamship, which made a course from further to eastward to one inclining in toward or nearer the New York shore, toward the Connecticut's tow, and then an alarm signal was blown by three blasts of the steam-whistle of the Connecticut, the steamship at that time being about half way between, off Fulton Ferry and the place of the Connecticut and tow.

Without answering this second signal, or any attention to the presence of the Connecticut and tow, the steamship continued going ahead, bearing directly on to the boats in tow of the Connecticut, without any stopping or backing of her engine, until within about her length and a half, or about four hundred to five hundred feet too near, by stopping and backing to avoid a collision, which followed with such force as to drive her stem nearly through the canal boat Morgan, in the head tier of the tow, and to cause her to sink with her cargo of grain.

The Othello had been lying on the easterly side of pier 44, on the New York side of the upper reach of the river, three or more blocks above the New York slip of the Catherine Ferry, stem in and stern out, and she backed out with her own steam, the tug Starbuck having a line to her port quarter to keep her stern up the river; and after backing out, the Starbuck took a hawser from steamship's bow and pulled it round down the river, and then cast off, and the steamship started ahead, moving very slow in getting under way in the upper reach of the river.

On and after the steamship was headed down the river, and as she was getting under way, and thereafter, she had the lower reach of the river, where the Connecticut and her tow were in plain sight.

The Connecticut there, as the steamship was passing down from this upper reach, was not bound up the river, nor on an opposite or parallel course, to pass off to port of the steamship, nor crossing from such course, but was slowly rounding to in toward New York, to land her boats, from a distance below so far off as to involve no risk of collision if the steamship had been properly navigated, and thereafter was stopped in the act of turning the drilling machine in plain sight before the

steamship had passed down the river in any such close proximity as to involve risk of collision, if the steamship had been properly or carefully navigated.

With any reasonable look-out or sufficient observation of the Connecticut, when or after the steamship was headed down and getting under way, or passing into the lower reach of the river, or when the Connecticut was first sighted from the steamship at a distance off of a mile or more, it could and would have been seen that the Connecticut had boats in tow; that she was not bound up the river nor on an opposite or parallel course, to pass off to port of the steamship, as
330 seems to have been assumed by the steamship's pilot, through careless or insufficient observation, but was rounding to in toward New York to land her boats; and thereafter, and before any dangerous proximity, that the Connecticut was engaged in the necessary and difficult manœuvre to bring her tow round, in order to effect such landing.

SECOND EXCEPTION.—For that the said judge did not find as matters of fact, as proposed by the claimants of the Connecticut on the trial, as follows:

III. The Connecticut was not in fault in turning the buoy as she did, nor in rounding to, in towards New York, to land her boats, nor in her manœuvre to bring the boats in her tow round head to the tide, before passing down inside of the drilling machine, as and when she was performing it, nor is any other fault in her navigation or proceeding imputable to her.

THIRD EXCEPTION.—For that said judge did not find as matters of fact, as proposed by the claimant of the Connecticut on the trial, as follows:

IV. That the sole cause of the collision and of the damage arising therefrom was the negligent navigation of the steamship Othello, in not keeping a sufficient lookout, in not responding to nor heeding the signals from the Connecticut, and in not passing to eastward, between the tow and the Brooklyn shore, or stopping and reversing in season to avoid the collision.

331 FOURTH EXCEPTION.—For that said judge did not hold and decide as matters of law, as proposed and requested by claimant of the Connecticut on the trial, that—

I. The decree condemning the Othello in damages and costs should be affirmed, with costs, in this court.

FIFTH EXCEPTION.—For that said judge did not hold and decide as matter of law as proposed and requested by claimant of Connecticut on the trial that—

II. At all events so much of the decree as adjudges that the libel filed in the action as against the steamboat Connecticut be dismissed with costs, and that the claimant of the Connecticut recover against the libellant its costs as taxed in the district court, should be affirmed with costs in this court.

SIXTH EXCEPTION.—For that upon the case as presented upon the pleadings and proofs in the circuit court, the said judge did not direct that the decree condemning the Othello in damages and costs
332 should be affirmed, or at all events that so much of the decree as adjudges that the libel filed in the action as against the steamboat Connecticut be dismissed with costs, and that the claimant of the Connecticut recover against the libellant its costs as taxed in the district court should be affirmed.

SEVENTH EXCEPTION.—The claimant of the Connecticut except, separately to each of the following findings of fact in said judge's findings

of fact, as not only contrary to the evidence, but without any sufficient or legal evidence to support them:

1. His finding as of fact to the effect that the Connecticut with her tow, after straightening up on passing Diamond Reef, was heading toward the Brooklyn shore, and was so heading until she had passed
333 about 100 feet above the drilling machine which was on Coenties Reef, instead of finding that after so straightening up she was inclined toward the New York shore.

2. His finding as a fact that when the pilot of the Othello, then above Fulton Ferry, saw the Connecticut, then in the vicinity of Diamond Reef, the Othello and Connecticut were on courses that if continued they would have passed each other port to port, instead of finding that the Othello at that time was about getting under way, and not yet on any actual or particular course, and that the Connecticut was about rounding Diamond Reef to land her tow on the New York side of the river.

3. His finding that the course taken or maintained by the Othello between Coenties and Diamond Reef, and so as to clear the former
334 reef to the southward from 200 to 300 feet, was the usual or a proper course under the circumstance of the approach or presence of the Connecticut or her tow off Coenties Reef.

4. His finding as of fact that by reason of the space occupied by the Connecticut and her tow there was no channel left on the Brooklyn side of the river which the Othello could take with safety, instead of finding as of fact that notwithstanding the space occupied by the Connecticut and her tow, the Othello had ample room and depth of water to have passed down to eastward of the Connecticut and her tow, as the Connecticut was off Coenties Reef, manœvering to bring her tow around so as to land her boats inside the drilling machine, head to the tide, and then to have passed out under the stern of the tow in the channel between Diamond and Coenties Reef, on the Diamond Reef side.

335 EIGHTH EXCEPTION.—In view of the facts as found, that the Connecticut gave a signal by two blasts of her steam-whistle that she wished the Othello to pass to her starboard after the Connecticut had headed into the New York shore and was north of Coenties Reef and her tow was straightened out at length, the Othello at the time of this signal being at least one-fourth of a mile from the Connecticut, which if proper care and attention had been given the persons navigating the Othello would have heard, and if the engines of the Othello had then been reversed her headway could have been entirely checked before reaching the tow and the collision could and would have been avoided, it is wholly immaterial to relieve the Othello or to charge the Connecticut
336 whether by reason of the space occupied by the Connecticut and her tow there was or was not channel-room for the Othello to pass without stopping or reversing by reason of her draft of water as supposed on the Brooklyn side of the river.

The claimant of the Connecticut therefore except' to the assumption in said findings of the court of such materiality.

NINTH EXCEPTION.—The claimant of the Connecticut excepts to the finding of fact that the Connecticut was guilty of negligence in changing her course as thereinbefore stated without giving earlier notice by signal of her intention to do so than she did give, and in occupying without such notice 1,050 feet of the river under the circumstances stated, as based upon assumption of fact not warranted by the evidence.

337 TENTH EXCEPTION.—The claimant of the Connecticut excepts to the finding that the Connecticut was guilty of negligence in changing her course without giving earlier notice by signal than she

did as unwarranted by reason of its assumption that it was her duty to have given such earlier notice by signal, without a finding that before such signal given by her by two blasts of her steam-whistle, the Connecticut and Othello were passing or meeting at a distance within half a mile of each other, and without evidence to warrant such finding.

ELEVENTH EXCEPTION.—Upon the facts as found by the court, that at the time of the signals from the Connecticut she was headed into the
New York shore, and was north of Coenties Reef, and her tow was
338 straightened out at length, the Othello at that time being at least
one-fourth of a mile from the Connecticut, and that if proper care and attention had been given the persons navigating the Othello would have heard the signal and could then have avoided the collision by reversing her engine, the omission by the Connecticut to give an earlier notice by signal on changing her course, upon which the finding of negligence on the part of the court is based, is a finding of negligence on the part of the Connecticut precedent and not concurrent with that of the Othello, to produce the collision.

The claimant of the Connecticut excepts, therefore, to the finding of
the judge that the loss of the canal-boat Sam Morgan and her
339 cargo resulted from negligence of the Connecticut concurring with that of the Othello to produce the collision as unwarranted.

TWELFTH EXCEPTION.—The claimant of the Connecticut excepts to the conclusion of law as found by the court, so far as it imports that so much of the decree of the district court as adjudges that the libel filed in this action as against the steamboat Connecticut be dismissed with costs, and that the claimant of the Connecticut recover against the libellant its costs as taxed in the district court be reversed, and that a decree for the loss incurred be entered against the Connecticut with the Othello, and that the damage be apportioned between the Connecticut
and Othello, or that the Connecticut is liable for any part of said
340 damage, as unwarranted by the facts as found by the court so far as sustained by any evidence.

THIRTEENTH EXCEPTION.—The said claimant also excepts to said conclusion of law so far as it affects the Connecticut as unwarranted by the facts as found by the court.

And inasmuch as the said several matters produced and given in evidence on the trial in said circuit court, and by the counsel for the claimant of the Connecticut objected and insisted on, and the said exceptions do not appear by the record of the decree of said judge, the counsel for said claimants has prepared and caused this bill of exceptions to be
settled as a record thereof according to the form of the statute in
341 such case made and provided, and the course and practice of the court, and to be signed and ordered on file by the judge.

WARD HUNT,
Asso. Just. Sup. Ct U. S.

(Indorsed:) Bill of exceptions. Filed November 24th, 1877.

U. S. circuit court, eastern district of New York.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAMBOAT CONNECTICUT, HER ENGINES, &c., Schuyler Steam Tow Boat Line, claimant and appellant, the Steamboat S. A. Stevens, her engines, &c.; William H. Foote and Samuel Schuyler, claimants and appellees, and the Steamship Othello, her engine, &c.; Charles Wilson and Arthur Wilson, claimants and appellants.

Take notice that Schuyler's Steam Tow Boat Line, claimants of the steamboat Connecticut, her engines, &c., above named, hereby appeals to the Supreme Court of the United States from the whole and every part of the decree entered in the above entitled cause with the clerk of this court on the 24th day of November, 1877, bearing date the
343 22nd day of November, 1877, so far as the same reverses so much of the district court or dismisses the libel as to the Connecticut, and so far as it is therein ordered, adjudged, and decreed that the libellant recover against or from the steamboat Connecticut, her engine, &c., or her claimants, the damages by him sustained by reason of the matters alleged in the libel, or as reported by the commissioner's report therein referred to, with interest and costs as therein adjudged to be paid, or any part of said damages, interest, or costs, and so far as the same condemns or charges the Connecticut, or her claimants, for or with any negligence or fault in respect to the collision therein mentioned or referred to, or for the payment of any damages, interest, or cost.

Dated New York, Nov. 30, 1877.

C. VAN SANTVOORD,
Proctor for Claimant of the Connecticut, Appellant.

344 TO JAMES K. HILL, Esq.,
Libellant's Proctor.
B. LINCOLN BENEDICT, Esq.,
Clerk, &c.,

Service of a copy of above notice of appeal admitted this 1st day of December, 1877.

BEEBE, WILCOX & HOBBS,
Proctors for Othello.
JAS. K. HILL,
Proctor for Lib'l't.

(Endorsed :) Notice of appeal filed December 3rd, 1877.

345 Supreme Court of the United States.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAMBOAT CONNECTICUT, HER ENGINES, &c., Schuyler's Steam Tow Boat Line, claimant and appellant, the steam tow boat S. A. Stevens, her engines, &c., William H. Foote and Samuel Schuyler, claimants and appellees, and the steamship Othello, her engines, &c., Charles Wilson and Arthur Wilson, claimants and appellants.

To the honorable the Supreme Court of the United States:

The petition and appeal of Schuyler's Steam Tow Boat Line, claimants of the steamboat Connecticut, her engine, &c., and appellant, respectfully showeth that on or about the 30th day of September, 1875, the above named libellant filed his libel in the district court of the United
346 States for the eastern district of New York against the *the* steamboats Connecticut, S. A. Stevens, the steamship Othello, and the steamtug N. B. Starbuck, their engines, &c., in a cause of collision and damage, in which libel it is alleged, and prays as therein contained, and to which this petitioner refers for its contents, that thereafter, on or about the 27th day of November, 1875, the claimant of said steamboat Connecticut above named, having executed the necessary stipulations for costs and value, did file its claim and answer, alleging and insisting, and praying as therein contained, and to which, for the contents thereof, the above appellant asks leave to refer; and such proceedings were thereafter had in said cause, that on the 27th day of November, 1876, a final decree was made and pronounced therein by the said district court, wherein it was in substance ordered, adjudged, and decreed that said libel as against each of the steamboats Connecticut, Sarah A. Ste-
347 vens, and N. B. Starbuck be dismissed with costs, and that the libellant recover against the steamship Othello, her engines, &c., the damage by him sustained by reason of the collision in the pleadings mentioned, with costs; and that after such final decree appeals were taken to the circuit court of the U. S. for the eastern district of New York by the said appellant from so much thereof as dismissed the libel as against the steamboats Connecticut and S. A. Stevens; and by the claimants of the steamship Othello from said decree, or so much thereof as condemns the said steamship Othello; and the said cause was removed thereby to the said circuit court, and such proceedings were had in said circuit court that on or about 23rd day of October,
348 1877, a decree was entered, bearing date Oct. 13, 1877, wherein it was ordered, adjudged, and decreed that said decree of said district court against said steamship Othello, as the sole party in fault, be reversed, and that libellant recover the damages by him sustained, &c., against the said steamboat Connecticut and said steamship Othello as caused by their concurrent negligence, said damages to be equally apportioned between them, and referring it to B. Lincoln Benedict, one of the commissioners of the court, to ascertain the amount due to the libellant, and to report thereon with all convenient speed; that said commissioner made his report, dated the 5th day of November, 1877; that thereafter, on or about the 24th day of November, 1877, a final decree was entered, bearing date the 22nd day of November, 1877, revers-

ing or modifying said decree of said district court, as above men-
349 tioned, and ordering, and adjudging, and decreeing that the report of said commissioner be confirmed, and that the libellant recover from the said steamboat Connecticut, her engine, &c., or her said claimant, and the said steamboat Othello, her engine, &c., or her said claimant, damages, interest, & costs amounting together to sixteen thousand seven hundred and sixty-four & $\frac{25}{100}$ dollars ($16,764$\frac{25}{100}$), and further ordering that as between the respective claimants of said Connecticut and said Othello said amount be paid by the respective claimants in equal parts, and that if either were unable to respond, the other should be responsible as therein provided, and further affirming so much
350 of said decree of said district court as dismisses the libel as to the S. A. Stevens with costs, and ordering, adjudging, and decreeing that her claimants recover costs in the district and circuit courts, amounting in all to one hundred and nineteen & $\frac{83}{100}$ dollars (119\frac{83}{100}$). And this appellant is advised and insist that said decree is erroneous so far as the same reverses so much of the decree of the district court as dismisses the libel as to the Connecticut, and as so far as it is therein ordered, adjudged, and decreed that the libellant receive against or from the steamboat Connecticut, her engine, &c., or her claimant the damages by him sustained by reason of the matters alleged in the libel, or as reported by the commissioner's report therein referred to, with in-
351 terest and costs, as therein adjudged to be paid, or any part of said damages, interest, or costs; and so far as the same condemns or charges the Connecticut or her claimant for or with any negligence or fault in respect to the collision therein mentioned or referred to, or for the payment of any damages, interest, or costs, inasmuch as said decree of said district court should have been affirmed as to said steamboat Connecticut with costs, and said libel should have been dismissed with costs as well in the circuit as in the district court as to the said Connecticut and this appellant, her claimant.

Wherefore this appellant, for these and other reasons, appeals from the said decree of the said circuit court so far as it reverses said
352 decree of the district court as to said steamboat Connecticut, or adjudges said Connecticut or this claimant to be liable for the damages from the collision aforesaid, interest and costs, or any part thereof, to the Supreme Court of the United States (and on the said appeal it intends to seek a new decision on the facts, on the pleadings and proofs in the circuit court and other proofs to be produced in the Supreme Court and to make new allegations and to pray different relief).

And it respectfully prays that the said decree of said circuit court and the libels, answers, depositions and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that said Supreme Court will proceed to hear the said cause
353 anew, and that the said decree of the circuit court may be reversed as to said steamboat Connecticut or her claimant, and a decree made dismissing said libel with costs as to the Connecticut, or such other decree made as to the said Supreme Court shall seem just.

And your petitioners will ever pray, &c.

Dated New York, November 30, 1877.

C. VAN SANTVOORD,
Proctor for claimant of the Connecticut, Appellant.

Due service of a copy of above petition and appeal admitted this 1st day of December, 1877.

BEEBE, WILCOX & HOBBS,
Proctors for Othello.
JAS. K. HILL.
Proctor for Libellant.

(Endorsed:) Petition of appeal. Filed December 3rd, 1877.

354 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

MADISON M. CALEB, LIBELLANT & APPELLANT,
vs.
THE STEAMBOAT CONNECTICUT, HER ENGINE, &c., Schuyler's Steam Tow-boat Line, claimant and appellant, the steam tow-boat S. A. Stevens, her engine, &c., William H. Foote and Samuel Schuyler, claimants & appellees, and the steamship Othello, her engine, &c., Charles Wilson & Arthur Wilson, claimants & appellants.

Know all men by these presents that we, Samuel Schuyler, of the city and county of Albany, in the State of New York, and John Featherly, of the same place, and Schuyler's Steam Tow-boat Line, are held and firmly bound unto the above named Madison M. Caleb, the libel-
355 lant, in the sum of twenty-five thousand dollars ($25,000), to be paid to the said libellant, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 29th day of November, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas the above-named Schuyler's Steam Tow-boat Line has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the eastern district of New York, so far as it concerns the steamboat Connecticut or her claimant:

Now, therefore, the condition of this obligation is such that if the above-named Schuyler's Steam Tow-boat Line shall prosecute
356 such appeal to effect, and answer all damages and costs if it fails to make its appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SAMUEL SHUYLER.
JOHN FEATHERLY.
SCHUYLER'S STEAM TOW-BOAT LINE,
By D. L. BABCOCK, *V. Prest.*

NORTHERN DISTRICT OF NEW YORK:

Sealed and delivered, and taken and acknowledged this 29th day of November, 1877, before me.

W. FROTHINGHAM,
United States Circuit Court Commissioner, N. D. of N. Y.

UNITED STATES OF AMERICA,
Northern district of New York, ss:

Samuel Schuyler and John Featherly, being duly sworn, each deposes and says that he resides in the city of Albany, in the State of New York, and that he is worth the sum of twenty-five thousand dollars over and above all his just debts and liabilities.

SAMUEL SCHUYLER.
JOHN FEATHERLY.

Sworn to this 29th day of November, A. D. 1877, before me.
W. FROTHINGHAM,
United States Commissioner Circuit Court.

(Endorsed:) Bond for damages and costs on appeal. Filed this 11th day of December, 1877.

The within bond approved as to form and sufficiency of the sureties.
JAS. K. HILL,
Proctor for Libellant.

Approved on consent.
CHAS. L. BENEDICT.

357 By the honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit, to Madison M. Caleb:

Whereas Schuyler's Steam Tow-boat Line, claimant of the steamboat Connecticut, her engine, &c., has lately appealed to the Supreme Court of the United States from the whole or every part of a decree lately rendered in the circuit court of the United States for the eastern district of New York in your favor and against the said steamboat Connecticut, her engine, &c., and her claimant, and the steamship Othello, her engine, &c., and her claimant, so far as the same reverses the decree of the district court as to said steamboat Connecticut, and as stated and alleged in the notice and petition of appeal of said claimant of the Connecticut and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the 2nd Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Brooklyn, in the eastern
358 district of New York, in the second circuit, the 11th day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

CHAS. L. BENEDICT.

Due service of a copy of the above citation is hereby admitted this 11th day of December, 1877.

JAS. K. HILL, *Proctor for Libel.*
BEEBE, WILCOX & HOBBS,
Proctors for Cl'm't Othello.

(Indorsed:) U. S. Supreme Court. Madison M. Caleb v. The steamboat Connecticut, steamboat S. A. Stevens, and steamship Othello. Citation. C. Van Santvoord, proctor for cl't of the Connecticut, app'l't. Issued December 11th, 1877. File in office of U. S. circuit court, Ct. st., C. Montague, Brooklyn.

359 *Bill of exceptions.*

United States circuit court for the eastern district of New York, in the second circuit.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAMBOAT S. A. STEVENS, HER ENGINES, &c., William H. Foote and Samuel Schuyler, claimants and appellees impleaded with others.

This cause came on to trial before the Hon. Ward Hunt, associate justice of the Supreme Court of the United States, at a term of the circuit of the United States in and for the eastern
360 district of New York, in the second circuit, on the eleventh day of September, A. D. 1877, on the appeal by the libellant from so much of the final decree of the district court of the United States for the eastern district of New York as dismisses the libel against the steamboat Connecticut with costs; the appeal of the libellant from so much of said final decree as dismissed the libel against the steamboat S. A. Stevens, and the appeal by the claimants of the steamship Othello from the final decree or so much thereof as condemns the said steamship to pay the libellants' claim for damages with costs.

361 The counsel for the libellant read the libel, and the counsel for the respective claimants of the Othello and the Connecticut and S. A. Stevens read the respective answers as contained in the apostles or record transmitted from the district to the circuit court.

Counsel for the respective parties read the testimony taken and the depositions read on the trial in the district court as contained in said apostles. Counsel for each party reading the testimony taken and the depositions read in its own behalf.

Counsel for libellant reading also the testimony of the witnesses on behalf of the steam-tugboat N. B. Starbuck as contained in the record; the party on whose behalf this testimony was taken or read, whether oral or by deposition, reading the direct and counsel for the other parties reading the cross.

262 Counsel for claimants of the Othello offered and read in evidence on its own behalf the testimony of John Maquin, John Henry Alice Bernard Brady, Joseph Henderson, taken on their behalf on appeal in the circuit court as contained in their depositions on file in the circuit court, and as it appears upon the record of such testimony hereto annexed; counsel for said claimants reading the direct and the counsel for the claimant of the Connecticut reading the cross-examination.

The counsel for the Othello here offered and put in evidence the Pilot Rules for Lakes and Seaboard prescribed by the board of supervising inspectors as amended January, 1865, and contained in ———, to which reference is had for their contents.

363 The counsel for the Othello moved to strike out as not admissible evidence of the facts therein stated, the testimony in the redirect examination of George M. Tounard to a conversation with Captain Brandow of the N. B. Starbuck (fol. 425), and also the testimony of Jacob Brandow of the N. B. Starbuck to what the pilot of the Othello told him and what he replied (fol. 644), and the judge, holding the same were not evidence of the facts therein stated, granted the motion.

Counsel for claimant of the Connecticut not opposing.

And here the testimony was closed, the above containing all the evidence that was put in on the question of fault for the collision.

364 The counsel for the libellant thereupon proposed on his behalf the following finding of facts and conclusions of law to be found by the court

AS FINDINGS OF FACT.

I.

That the libellant and appellant on the 18th day of August, 1875, was the true and only owner of the canal-boat Sam Morgan, her tackle, apparel, and furniture.

II.

That said canal-boat was tight, staunch, and strong, and well and sufficiently manned, tackled, apparelled, and furnished, and in every way fitted for the business in which she was then engaged of transporting grain between Buffalo and New York.

III.

That on the fifth day of August, 1875, the said boat had received on board, at Buffalo, in the State of New York, seventy-seven hundred bushels of wheat, to be therein transported from said port of Buffalo to the port of New York, at the agreed rate of freight of eight cents per bushel, and having proceeded from said port of Buffalo, laden as aforesaid, through the canal, arrived in safety at Albany on the fifteenth day of August, 1875.

That on the sixteenth day of August, 1875, the owners of the steam tow-boat Connecticut, in consideration of a reasonable sum, then and there agreed to be paid by libellant and appellant, undertook and agreed to safely tow said canal-boat with her said cargo from Albany, down the Hudson River, to the port of New York, and thereupon made up a tow of thirty-one canal-boats, in about six tiers of five boats abreast, with libellant's and appellant's boat, the Sam Morgan, on the outside, in the head tier, on the starboard side of said tow and fastened in said tow, and to the steam tow-boat Connecticut, in the usual and customary way.

That the tow thus made up, the steam tow-boat Connecticut proceeded with said tow down the Hudson River, and arrived in safety off the Battery, in the port of New York, with twenty-five boats in

365 the tow, at about five and one-half o'clock on Wednesday morning, the eighteenth day of August, 1875, where the steam tow-boat Connecticut was joined by the steam tow-boat S. A. Stevens, as a helper, coming alongside on the starboard side of said steam tow-boat Connecticut, to help direct the steerage and course of the Connecticut; and said tow and said two steam tow-boats proceeded on into the East River with said tow, it being at the time light and clear, with no wind of any consequence, and the tide flood.

That about opposite pier 7, in the East River, on the New York side, and about six hundred feet from the end of the said pier, was lying at that time a machine used for blasting and drilling a reef in the East River.

That the said steam tow-boats Connecticut and S. A. Stevens shaped

their course to go outside of said drilling-machine, and proceeded on to a point a little beyond said drilling-machine, and then hauled in towards the New York piers, and stopped and reversed their engines and brought said boats to a standstill in the water for the purpose of having the tide swing said tow around up the East River, and then of drawing said tow down between the piers and said drilling-machine, in order that the boats in said tow might be landed in Coenties slip, the usual and customary place for landing canal-boats.

That while said steam tow-boats were at a standstill in the water, as before mentioned, and said canal-boats were swinging on the tide, the steamship Othello, with the steamtug N. B. Starbuck on her starboard quarter, was seen coming down the East River, about opposite Fulton Ferry slip, on the Brooklyn shore.

That soon after the said steamship and steamtug were seen by those on the Connecticut and S. A. Stevens, the latter vessels blew their steam whistles, but received no response whatever from the said steamship and steamtug, but they continued on at a high rate of speed for said tow; that the said steam tow-boat Connecticut then gave several rapid and successive blasts of her steam whistle, but the said steamship and steamtug paid no attention and gave no response whatever to the same, but came on at a high rate of speed, and ran with great force and violence the bow of the said steamship Othello into libellant's boat, the Sam Morgan, on her starboard side, near the first hatch, striking a square and direct blow, and cutting said canal-boat right in half, so that said canal-boat, with all her cargo, sank at once and became a total loss.

That the said steamship and steamtug then reversed their engines, and ran back up the East River some distance, and waited until
366 said tow had floated up and hauled in to the New York piers, and then said steamship came down again and went out to sea, without offering any assistance whatsoever to said tow, or making any enquiry in relation to the damage she had done.

AS CONCLUSIONS OF LAW.

First. That said collision and consequent damages were in no way the fault of, or caused by, the libellant, or those on board of said canal-boat at the time of the said occurrence, but, on the contrary, they did everything to avoid the same.

Second. That said collision and consequent damages occurred solely through the fault and negligence of those in command of and navigating said steam-vessels.

Third. That the steam tow-boats Connecticut and S. A. Stevens were at fault, in that they did not see the steamship Othello and tug N. B. Starbuck before they did, and in not blowing their whistles before they did; also in swinging so large a tow around in a narrow river and producing thereby an obstruction to navigation, and also without any previous signal or indication of their intention so to do suddenly changing their course towards the New York shore, and across the bows of the steamship Othello, in direct violation of the rules of navigation.

Fourth. That the steamship Othello was at fault in not seeing said tow, although it was light and clear and able to be seen at a great distance; in not responding to any whistles of the Connecticut and S. A. Stevens, and in not blowing any whistles whatsoever; in not making a careful observation of the said tow-boats and tow, and of the manœuvre which she was engaged in and in not passing to the eastward between the tow and the Brooklyn shore when she saw where the tow-boats and

tow were heading; also, when they saw that a collision was inevitable, in not stopping or changing her course, instead of keeping a direct course for said tow and striking the libellant's boat, the Sam Morgan on her broadside a square and direct blow with the bow of said steamship Othello.

Fifth. The decree of the district court should be so far modified or changed as to adjudge and decree that the libellant and appellant in this action recover his damages against the steamboat S. A. Stevens and the steamboat Connecticut and the steamboat Othello jointly, with costs.

367 The judge thereafter, and after time taken for consideration, filed with the clerk of the circuit court findings of fact and conclusions of law as found by the court, of which the following is a copy:

United States circuit court, eastern district of New York.

MADISON M. CALEB
vs.
THE STEAMSHIP OTHELLO & OTHERS.

SEPT. 24th, 1877.

I find the facts in this case to be as follows, viz:

On the morning of August 18th, 1875, the canal-boat Sam Morgan, owned by the libellant and laden with a cargo of grain, with other boats, was being towed by the steamer Connecticut, assisted by the tug S. A. Stevens.

368 There were in the tow five tiers of five boats each. The Morgan was the starboard boat in the first or hawser tier.

The tow was attached to the Connecticut by a hawser 200–250 long. The entire length of the two, steamboat, hawsers, and canal-boats, 1,050 feet.

At about 5 o'clock on the morning in question the tow, on its passage from Albany, had reached the Battery in the port of New York on its way to the East River piers. The tide was slightly ebb in the Hudson River and was young flood in the East River. There were vessels in the harbor which prevented a passage near to the Battery, and the tow passed between Diamond Reef and Governor's Island, and about 100 feet southward of the reef. On passing the reef the tow took the centre of the river, or nearly so, straightened up its entire length, and,

369 heading towards the Brooklyn shore, passed about 1,500 feet up the river above Diamond Reef and about 100 feet above the drilling-machine, which was then on Coenties Reef, holding the same general course.

The Connecticut then turned westwardly, running across the river, pointing towards Wall Street Ferry, on the New York side. She had stopped her engines, but those of the Stevens were at work. She thus passed about seventy-five feet past the drilling machine towards the New York shore, and while at this point the collision hereafter mentioned occurred.

The drilling machine was opposite Coenties slip, and about six hundred feet from the piers.

Diamond Reef is opposite the N. E. end of Governor's Island.

At the Coenties Reef the river is about three-quarters of a mile wide.

There are scattering rocks between Diamond Reef and Gov-

370 ernor's Island, which renders it unsafe for a vessel like the Othello to attempt the passage between them.

There is a sand spit along the Brooklyn shore running down to Governor's Island and extending above the Coenties Reef.

There is a ship channel between Coenties Reef and Diamond Reef, and it is the only channel for a vessel of the size and draft of the Othello.

From pier 44, East River, to Diamond Reef is one mile and three-eighths.

From Fulton Ferry to Diamond Reef is about one mile.

From Wall Street Ferry to Diamond Reef is about one-half mile.

From Wall Street Ferry to Coenties Reef is about one-fourth of a mile.

From Fulton Ferry to Coenties Reef is one-half mile.

371 From Coenties Reef to Diamond Reef is about one-half mile.

At about five o'clock, on the morning in question, the steamship Othello left her dock at pier 44, East River, on one of her regular trips to Hull, England. After getting headed down the river she took a course about in the middle of the river; above Fulton Ferry her pilot saw the Connecticut, then in the vicinity of Diamond Reef, well on his port h'ad.

The Othello and Connecticut were then on courses that, if they continued, they would have passed each other port to port three hundred feet apart. The Othello maintained her course, heading for between Coenties and Diamond Reef, and so as to clear the former reef to the southward from 200 to 300 feet, which was the usual and proper course for steamers of her class. She was running half speed, or about

372 four knots an hour. She was in charge of a licensed Sandy Hook pilot, who stood on the forward bridge.

When the Othello reached a point in the river near the Coenties Reef the Connecticut had passed on her course so far as to avoid collision, but the Othello came in collision with the Sam Morgan, being the starboard boat in the first tier of the tow of the Connecticut, cut her in two and sunk her. The boat and the cargo were entirely destroyed.

I find further as matter of fact that the Connecticut gave a signal by two blasts of her engine that she wished the Othello to pass to her starboard, but that she did not give such signal until she had headed into the New York shore, and was north of Coenties Reef, and her tow was straightened out at length, the whole length of steamboat hawsers

273 and tow extending over a space in the river of one thousand and fifty feet, and that by reason of the space thus occupied by the Connecticut and her tow there was no channel left on the Brooklyn side of the river which the Othello could take with safety.

At the time the signal of two blasts was given by the Connecticut, the Othello was at least one-fourth of a mile from the Connecticut, and if proper care and attention had been given the persons navigating the Othello would have heard the said signal.

I further find that if the engines of the Othello had been reversed immediately upon making the signal of two blasts by the Connecticut, her headway could have been entirely checked before reaching the tow, and the collision which did occur could and would have been

374 avoided, but that her engines were not so reversed until the Othello was within one-eighth of a mile from said tow and too late to prevent a collision.

I find that the Connecticut was guilty of negligence in changing her course as hereinbefore stated without giving earlier notice of her intention to do so than she did give, and in occupying without notice 1,050 feet of the river under the circumstances stated.

I find that the Othello was guilty of negligence in not hearing or heeding the signal of the Connecticut of two blasts of her whistle and in not reversing her engines sooner than she did.

I find that neither the Connecticut nor the Othello was free from fault, and that the loss of the canal-boat Sam Morgan and her cargo resulted from the concurring negligence of the said steamers.

As a conclusion of law, I find and decide that the judgment
375 of the district court must be reversed, and a decree for the loss incurred entered against both of said vessels, the damages apportioned as is by law in such cases provided.

Let a decree be entered accordingly.

WARD HUNT,
Ass't Justice Sup. Ct. U. S.

And also filed with said clerk his opinion as follows:

U. S. circuit court, eastern district of New York.

MADISON M. CALEB, LIBELLANT,
vs.
THE STEAMBOAT OTHELLO, THE STEAMBOAT Connecticut, and others.

SEPTEMBER 24, 1877.

HUNT, *Justice:*

376 The evidence taken in this court materially alters the aspect of the case. In one view I think its influence is controlling.

The defense of the Connecticut is based chiefly upon the theory that she was engaged in rounding to, for the purpose of landing her tow on the New York side of the East River. This action it is said occupied both time and space to a considerable extent. Her purpose no doubt was thus to land, and to accomplish it she was justified in taking a proper portion of the stream and for a proper length of time. She was not, however, released from the necessity of care and attention, or from due observance of the rules of navigation.

It is quite clear from the evidence of her own witnesses that as the Connecticut passed the Diamond Reef she steamed up the East River in the direction of N. N. E., or thereabout, parallel to the course
377 of the Othello, which was S. S. W.; that she straightened out her tow; that she was headed towards the Brooklyn shore, and that she thus proceeded for more than a quarter of a mile; this course and at this point was noted by the Othello, and that vessel then had the right to assume (and could act on no other assumption) that the two vessels would pass each other port to port.

If the Connecticut desired that a different course should be taken, it was her duty to give notice to that effect before or at least as early as she should begin to change her course. This, according to the evidence of all of her own witnesses, she did not do. Her two blasts were blown until she was above the Coenties Reef, headed directly for the New York side, and her tow tailed out across the river. The Othello was in plain sight to her, and no reason is given why she did not make her signal at an earlier time. It was her duty to do so, and if it had
378 been done we cannot say that the accident would have occurred within the well settled rules on the subject. This was contributing negligence, rendering her liable for the damages.

I think the officer of the Connecticut who testified that they did not

see the Othello until they were on the upper side of the drilling machine at Coenties Reef, are in error as to time or place. The evidence of the officers of the Othello is to the effect that they saw the Connecticut while she was at the Diamond Reef, and when the Othello was opposite the Fulton Ferry she was easily to be seen by the other vessel. The pilot of the Connecticut testifies that when the whistles were blown the Othello was opposite Fulton Ferry. Her captain testifies that the Connecticut was a hundred feet past the drilling machine on Coenties Reef, heading
379 to the New York shore, when he first saw the Othello, and blew the whistle. This was within a half a mile of Fulton Ferry.

Why was she not seen before? She had been slowly coming down the river for three eighths of a mile above Fulton Ferry, and in plain view of the Connecticut. I think the Othello must have been seen by the officers of the Connecticut at a much earlier time and place than when the latter vessel had passed the drilling machine on Coenties Reef. If they failed to see her while they were sailing from Diamond Reef to and around Coenties Reef it is a fault and a negligence as great as not to have given an early notice of an intended change of course. In either view the negligence is manifest.

The negligence of the officers of the Othello is not less evident. The learned judge of the district court was justified, as the evidence
380 was given before him in holding that the Othello could have passed to the eastward of the tow near to the Brooklyn shore, and thus have avoided the danger. The evidence, as since given in the circuit court, puts an end to this theory. It is plainly proven that this channel is only about three hundred feet in width, and that with this tow of 1,050 feet, extending out past Coenties Reef, an eastward passage was quite impracticable. On this point the new evidence is controlling.

On the other point, however, the fault of the Othello is evident. When the Othello reached Fulton Ferry the change of course and the position of the Connecticut was beyond doubt. She was heading across to the New York side, and then gave the signal to that effect. If we assume, as some of the evidence indicates, that the Othello at this time
381 had proceeded as far as the Wall Street Ferry, the case is not altered. The one is a distance of a half, the other of a fourth, of a mile from Coenties Reef, and the Othello was at a speed not exceeding four knots per hour.

By experiment actually made on the Othello by the witness Bristow, it appeared that when the ship was at full speed, that is, going at eight knots an hour, she could be brought to a dead stop in five minutes. Without assuming that these proportions can be indefinitely extended, we may assume that if she was going at only half the speed she could be stopped in a shorter time. The witness expressly testifies that under conditions of speed and tide like those existing when the collision occurred she could be brought to a dead stand in four times her length.

According to the view of the testimony most favorable to the
382 Othello, she was opposite Wall Street Ferry when the whistles were blown, one-fourth of a mile from Coenties Reef.

That she did not hear or did not regard the signal was a great fault, and resulted in the destruction of the canal-boat and her cargo.

Both vessels being in fault, there must be an apportionment of the damages, and to this end the decree must be reversed and a reference ordered.

383 And thereafter, upon notice thereof, such proceedings were had in said circuit court that on or about the 23d day of October, 1877, a decree was entered bearing date October 13th, 1877, wherein it was

ordered, adjudged, and decreed that said decree of said district court against said steamship Othello, as the sole party in fault be reversed, and that libellant recover the damages by him sustained against the said steamboat Connecticut and said steamship Othello, as caused by their concurrent negligence, said damages to be equally apportioned between them and referring it to B. Lincoln Benedict, esq., one of the commissioners of the court, to ascertain the amount due to the libellant and to report thereon with all convenient speed. That the said commissioner made his report, dated the 5th day of November, 1877, and that thereafter and on or about the 24th day of November,
384 1877, a final decree was entered bearing date the 22d day of November, 1877, reversing or modifying said final decree of said district court as above mentioned, and ordering and adjudging and decreeing that the report of said commissioner be confirmed, and that the libellant recover from the said steamboat Connecticut, her engine, &c., or her said claimant, and the said steamship Othello, her engine, &c., or her said claimant, damages, interest, and costs, amounting together to sixteen thousand seven hundred and sixty-four and $\frac{25}{100}$ dollars ($16,764.25), and further ordering that as between the respective claimants of said Connecticut and said Othello said amount be paid by the respective claimants in equal parts, and that if either were unable to respond the other should be responsible as therein provided.

385 And further affirming so much of said decree of said district court as dismisses the libel as to the S. A. Stevens with costs, and ordering, adjudging, and decreeing that her claimants recover costs in the district court, amounting in all to one hundred and nineteen and $\frac{83}{100}$ dollars ($119.83).

And thereafter the claimants of the steamboat Connecticut and the steamboat Othello having taken appeals from said final decree to the Supreme Court of the United States, this libellant has also taken an appeal from so much of said final decree as dismisses his said libel as against the steamboat S. A. Stevens, with costs, and filed in the office of the clerk of this court and served upon the proctor for the S. A. Stevens a proposed bill of exceptions containing the following exceptions:

386 FIRST EXCEPTION.—For that the said judge did not make any findings of fact or law as to the steamboat S. A. Stevens.

SECOND EXCEPTION.—For that the said judge upon the case as presented upon the pleadings and proofs in the circuit court, did not find the steamboat S. A. Stevens guilty of the same acts of negligence and violations of the rules of navigation as the steamboat Connecticut.

THIRD EXCEPTION.—For that the said judge in the interlocutory and final decree entered by him dismissed the libel as to the said steamboat S. A. Stevens and directed that her claimants recover their costs against the libellant.

And inasmuch as the said several matters produced and given in the evidence on the trial in said circuit court and by the counsel for the libellant and the said exceptions do not appear by the record of
387 the decree of the said judge, the counsel for said libellant has prepared and caused this bill of exceptions to be settled as a record thereof according to the form of the statute in such case made and provided, and the course and practice of the court and to be signed and ordered on file by the judge.

WARD HUNT,
Asso. Justice Sup. Ct. U. S.

(Endorsed:) Bill of exceptions. Filed May 24, 1878.

388 United States circuit court, eastern district of New York.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAMBOAT S. A. STEVENS, HER ENGINES, &c., William H. Foote and Samuel Schuyler, claimants and appel'ees, impleaded with others, claimants and respondents.

SIR: Please take notice that Madison M. Caleb, the libellant herein, hereby appeals to the Supreme Court of the United States, from the decree entered in the above entitled cause, with the clerk of this court, on the twenty-fourth day of November, 1877, bearing date the twenty-second day of November, 1877, so far as the same affirms the decree of the district court dismissing the libel, with costs as against the
389 steamboat S. A. Stevens, her engines, &c., and directing that her claimants, William H. Foote and Samuel Schuyler, recover against the libellant their costs as taxed in the district court, amounting to seventy-four and twenty-seven hundredths dollars, with the interest thereon from November twenty-seventh, 1876, amounting to four and $\frac{34}{100}$ dollars, together with their costs as taxed in this court, forty-one and $\frac{23}{100}$ dollars, in all amounting to the sum of one hundred and nineteen and $\frac{83}{100}$ dollars.

Dated New York, December 4, 1877.

JAMES K. HILL,
Proctor for Libellant and Appellant.

To A. VAN SANTVOORD, Esq.,
Proctor for S. A. Stevens.
B. LINCOLN BENEDICT, Esq.,
Clerk, &c.

Due service of a notice of appeal, of which above is a copy, is hereby admitted.

N. Y., December 10th, 1877.

A. VAN SANTVOORD,
Proctor for the S. A. Stevens.

(Endorsed:) Notice of appeal. Filed December 11th, 1877.

390 Supreme Court of the United States.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAMBOAT S. A. STEVENS, HER ENGINES, &c., William H. Foote and Samuel Schuyler, claimants and appellees, impleaded with others, claimants and appellees.

To the honorable, the Supreme Court of the United States.

The petition and appeal of Madison M. Caleb, libellant and appellant, respectfully showeth:

391 That in or about the thirtieth day of September, one thousand eight hundred and seventy-five, the above-named libellant filed his libel in the district court of the United States for the eastern district of New York, against the steamboats Connecticut, S. A. Stevens,

the steamship Othello, and the steam-tug N. P. Starbuck, their engines, &c., in a cause of collision and damage, in which libel it is alleged, and prays as therein contained, and to which this petitioner refers for its contents; and such proceedings were thereafter had in said cause, that on the twenty-seventh day of November, one thousand eight hundred and seventy-six, a final decree was made and pronounced therein by the said district court, wherein it was, in substance, ordered, adjudged, and decreed that said libel as against each of the steamboats,
392 Connecticut, S. A. Stevens, and N. B. Starbuck be dismissed, with costs, and that the libellant recover against the steamship Othello, her engines, &c., the damages by him sustained by reason of the collision in the libel mentioned, with costs; and that after such final decree appeals were taken to the circuit court of the United States for the eastern district of New York, by the said libellant, from so much thereof as dismissed the libel as against the steamboats Connecticut and S. A. Stevens, and by the claimants of the steamship Othello, from so much of said decree as condemned the said steamship Othello, and the said cause was removed thereby to the said circuit court; and such proceedings were had in said circuit court that thereafter, and on or about the twenty-fourth day of November, one thousand eight hundred and seventy-seven, a final decree was entered, bearing date the twenty-second day of November, one thousand eight hundred and seven-
393 ty-seven, reversing or modifying said decree of said district court, as above mentioned, and ordering and adjudging and decreeing that the said libellant recover from the said steamboat Connecticut, her engines, &c., or her said claimant, and the said steamship Othello, her engines, &c., or her said claimants, damages, interest, and costs, amounting, together, to sixteen thousand seven hundred and sixty-four and $\frac{25}{100}$ dollars ($16,764 $\frac{25}{100}$); and further ordering that as between the respective claimants of said Connecticut and said Othello, said amount be paid by the respective claimants in equal parts; and that if either were unable to respond, the other should be responsible, as therein provided; and further affirming so much of said decree of said district court as dismisses the libel as to the steamboat S. A. Stevens, with costs; and ordering, adjudging, and decreeing that her claimants recover costs in the district and circuit courts against the
394 libellant, and which said costs amounted in all to the sum of one hundred and nineteen and $\frac{83}{100}$ dollars ($119 $\frac{83}{100}$).

And this appellant is advised and insists that said decree is erroneous so far as the same affirms the decree of the district court in dismissing the libel as to the steamboat S. A. Stevens, and directing that the claimants recover their costs in the district and circuit courts against the libellant, and ought to be reversed, inasmuch as the libellant and appellant is entitled to recover the damages by him sustained of said steamboat S. A. Stevens, and the steamboat Connecticut, and the steamship Othello, jointly and severally, together with his costs.

And this appellant for this and other reasons appeals from so much of said decision and decree as dismisses said libel as against the steamboat S. A. Stevens, with costs, to the Supreme Court of the United States; and on the said appeal he intends to have said cause heard anew on the pleadings and proofs in the circuit court, and other
395 proofs to be introduced in the Supreme Court; and he respectfully prays that the said decree of said circuit court, and the libel answers, depositions, and proofs in the said cause may be sent to the Supreme Court of the United States without delay, and that said Supreme Court will proceed to hear the said cause anew, and that the

said decree of the circuit court may be so far reversed as to adjudge and decree that the libellant and appellant in this action recover his damages against said steamboat S. A. Stevens, and the steamboat Connecticut, and the steamship Othello, jointly and severally, with interest and costs, or such other decree made as to the said Supreme Court shall seem just.

And your petitioner will ever pray, &c.

Dated New York, December 5th, 1877.

396 JAMES K. HILL,
Proctor for Libellant and Appellant.

Due and timely service of a copy of above petition of appeal is hereby admittted.

New York, December 10, 1877.

ABRAHAM VAN SANTVOORD,
Proctor for the S. A. Stevens.

Allowed.

CHAS. L. BENEDICT.

(Endorsed:) Petition of appeal. Filed December 11th, 1877.

397 *Bond for costs.*

Circuit court of the United States of America for the eastern district of New York, in the second circuit.

MADISON M. CALEB, libellant & appellant,
vs.
THE STEAMBOAT S. A. STEVENS, HER ENGINE, &c., William H. Foote and Samuel Schuyler, claimants and appellees, impleaded with others.

Know all men by the' presents that we, James K. Hill and Henry T. Wing, are held and firmly bound unto the above-named William H. Foote and Samuel Schuyler, the claimants of the steamboat S. A. Stevens in the above-entitled action, in the sum of three hundred dollars, to be paid to the said Foote & Schuyler, for the payment of which, well and truly to be made, we bind ourselves, and each of us our and each of our heirs, executors, and administrators, jointly and
398 severally, firmly by these presents, sealed with our seals, and dated the fifth day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas the above-named Madison M. Caleb has prosecuted and appealed to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the judge of the circuit court of the United States for the eastern district of New York, so far as it dismisses the libel against the steamboat S. A. Stevens or her claimants:

Now, therefore, the condition of this obligation is such, that if the above-named Madison M.Caleb shall prosecute such appeal to effect, and answer all damages and costs if he fails to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

JAMES K. HILL. [L. S.]
399 HENRY T. WING. [L. S.]

SOUTHERN DIS'T OF NEW YORK,
City and County of New York, ss:

Sealed and delivered and taken and acknowledged this 5th day of December, 1877, before me.

[L. S.] JOHN BASSETT, Jr.,
Notary Public, N. Y. City & Co.

UNITED STATES OF AMERICA,
Southern District of New York, City & County of New York, ss:

James K. Hill and Henry T. Wing, being duly sworn, each deposes and says that he is worth the sum of three hundred dollars, over and above his just debts and liabilities.

JAMES K. HILL.
HENRY T. WING.

Sworn to this 5th day of December, A. D. 1879, before me.

[L. S.] JNO. BASSETT, Jr.,
Notary Public, N. Y. City & Co.

Approved:

CHAS. L. BENEDICT.

(Endorsed:) Bond for costs on appeal. Filed December 11th, 1878

400 By the honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit.

To William H. Foote and Samuel Schuyler:

Whereas Madison M. Caleb, as libellant, has lately appealed to the Supreme Court of the United States, from so much of a decree lately rendered in the circuit court of the United States for the eastern district of New York, in your favor and against the said libellant, as dismisses the said libel against the steamboat S. A. Stevens, her engines, &c., and as stated and alleged in the notice and petition of appeal of said libellant, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

401 Given under my hand, at the city of Brooklyn, in the eastern district of New York, in the second circuit, the first day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

CHAS. L. BENEDICT.

402 (Indorsed:) U. S. Supreme Court. Madison M. Caleb vs. the Steamboat S. A. Stevens, her engines, &c., William H. Foote and Samuel Schuyler, claimants, &c. Citation. Henry T. Wing, for libellant. Issued June 1st, 1878.

403 *Bill of exceptions.*

United States circuit court for the eastern district of New York in the second circuit.

MADISON M. CALEB, LIBELLANT AND APPELLANT, *against* THE STEAMSHIP OTHELLO, HER ENGINE, &C., CLAIMants and appellants, impleaded with others.

This cause came on to trial before the Hon. Ward Hunt, associate jus-

tice of the Supreme Court of of the United States, in and for the eastern district of New York, in the second circuit, at a term of the circuit court of the United States, on the eleventh day of September, A. D. 1877, on the appeal by the claimants of the steamship Othello, her engine, &c., from so much of the final decree of the district court of the United
404 States for the eastern district of New York as condemns the claimants of the steamship Othello to pay the libellant's claim for damages with costs, and the appeal by the libellant from so much of the said final decree of the district court of the United States for the eastern district of New York as dismisses the libel against the steamboat Connecticut with costs, and the appeal of the said libellant from so much of said final decree as dismisses the libel against the steamboat S. A. Stevens with costs.

The counsel for the libellant read the libel, and the counsel for the respective claimants of the Othello, the Connecticut, and S. A. Stevens read their respective answers as contained in the apostles or record transmitted from the district to the circuit court.

Counsel for the respective parties read the testimony taken
405 and the depositions read on the trial in the district court, as contained in said apostles.

Counsel for each party reading the testimony taken, and the depositions read in its own behalf.

Counsel for libellant reading also the testimony of the witnesses on behalf of the steamboat N. B. Starbuck, as contained in the record; the party in whose behalf the testimony was taken or read, whether oral or by deposition, reading the direct, and counsel for the other parties reading the cross.

Counsel for claimants of the Othello offered and read in evidence on their behalf the testimony of John Maginn, John Henry Alice, Bernard Brody, Joseph Henderson, taken on their behalf on appeal in the circuit court, as contained in their depositions on file in the circuit court, and as it appears upon the record of such testimony hereto annexed.

406 Counsel for said claimants reading the direct, and the counsel for the claimant of the Connecticut reading the cross-examination.

The counsel for the Othello here offered and put in evidence the pilot rules for lake and seaboards presented by the board of supervising inspectors, as amended January, 1875, and as contained in , to which reference is had for their contents.

The counsel for the Othello moved to strike out, as not admissible evidence of the facts therein stated, the testimony in the redirect examination of George M. Tournard to a conversation with captain Brandon, of the N. B. Starbuck, fol. 425, and also the testimony of Jacob Brandon, of the N. B. Starbuck, to what the pilot of the Othello told him, and what he replied (fol. 644), and the judge, holding the same were not evidence of the facts therein stated, granted the motion, counsel for the
407 claimants of the Connecticut and S. A. Stevens not opposing; and here the testimony was closed, the above containing all the evidence that was put in on the question of fault for the collision.

The counsel for the claimants of the steamship Othello thereupon proposed, on their behalf, the following findings of fact and conclusions of law to be found by the court:

FINDINGS OF FACT.

First. On the morning of August 18th, 1875, the canal-boat Sam. Morgan, owned by the libellant, and laden with a cargo of grain, was,

with other boats, being towed by the steam-tug Connecticut, assisted by the steam-tug S. A. Stevens. There were in the tow five tiers of five boats each. The Morgan was the starboard boat, in the first or hawser tier. The tow was attached to the Connecticut by a hawser 200–250 feet long; the extreme length over all of tug, hawser and canal boats was about 1,050 feet. The Connecticut was 318 feet long, and the canal boats each about 100 feet, with spaces between each tier of from five to ten feet. The Stevens was attached to the Connecticut on the latter's starboard side.

Second. At from five to six o'clock on the morning in question, the said tugs, with their tow, on their passage from Albany down the Hudson River, had reached a point off the Battery in the port of New York. The tide was young flood in the East River. The tugs and tow took a direction across the East River, angling on to the Brooklyn shore (fol. 404), to the westward of Diamond Reef, and between that reef and the east end of Governor's Island. Diagrams showing such angle and direction appear at pages 39 and 55 of the printed apostles. The Connecticut passed Diamond Reef about 100 feet to westward or southward, and at that time, or soon after, straightened up the river, in about the
408 centre, or a little further towards Brooklyn shore, still angling on to the Brooklyn shore if anything (fol. 310). This course was maintained until the Connecticut had got about 1,500 feet up the river above Diamond Reef (215, 219), and on a line about 100 feet on the up-river side of the drilling machine, which was then on Coenties Reef (196), when she turned pretty square around, aided by the power of the Stevens, and ran straight across the river (305) until her amidships was about abreast of the drilling machine; she had previously stopped her engines, but the Stevens, her engine wide open, still continued working her ahead and around, until she had passed about 75 feet further in towards the New York piers.

Third. The drilling machine was opposite Coenties slip, and about 600 feet off the piers. Diamond Reef is opposite the east end of Governor's Island. The distance between Diamond and Coenties Reef from rock to rock, is about 500 yards. The width of the river opposite Coenties Reef is about three quarters of a mile, perhaps a little less (294). Diamond Reef, in a diagonal line from the east end of Governor's Island to Coenties slip, is about one-third of the distance from Governor's Island (607). There are scattering rocks between Diamond Reef and Governor's Island, which prevent the passage of such vessels as the Othello.

There is a sand spit along the Brooklyn shore, running down towards Buttermilk Channel and the east end of Governor's Island. The eastern end of it extends off Governor's Island five hundred yards. There is a channel between Coenties and Diamond Reef; it is the only channel for a vessel of the size and draft of the Othello.

From pier 44 East River to Diamond Reef is one mile and three-quarters.

From Fulton Ferry to Diamond Reef is about one mile.

From Wall Street Ferry to Diamond Reef is about one-half mile.

409 From Wall Street Ferry to Diamond Reef to Coenties Reef is about one-fourth of a mile.

From Fulton Ferry to Coenties Reef is one-half mile.

From Coenties Reef to Diamond Reef is about one-half mile.

Fourth. At about five o'clock on the morning in question the said steamship Othello left her dock at pier 44, East River, on one of her regular trips in her line to Hull, England; after getting headed down the river she took a course about in the middle of the river, a little, if

anything, nearer the New York side; above Fulton Ferry her pilot saw the Connecticut then in the vicinity of Diamond Reef, well on his port hand. The Othello and Connecticut were then on such courses as that, if continued, they would have passed each other port to port, three hundred feet apart. The Othello maintained her course heading for between Coenties and Diamond Reef, and so as to clear the latter reef to the southward from 200 to 300 feet, which was the usual and only course for steamers of her class. She was running half speed or "dead slow." She was in charge of a licensed Sandy Hook pilot, who stood on the forward bridge with her master. She had two look-outs forward. She had attached to her, on her starboard quarter, the steam-tug N. B. Starbuck, but the engine of the latter was not in motion.

Fifth. As soon as the Connecticut changed her course as aforesaid, and which was to cross the bows of the Othello, orders were immediately given to stop, reverse, and back strong, not only to the engineer of the Othello, but to the Starbuck, which orders were promptly obeyed, and the headway of the Othello substantially stopped. But the Connecticut's tow, then about straight across the river, and broadside to the tide, on the swing from the time the tail of the tow had cleared Governor's Island, came towards the Othello, the said boat, Sam. Morgan, on the starboard side of the first tier, came in contact, near the starboard quarter, with the stem of the Othello, and was thereby so injured as to very soon thereafter sink with her cargo.

The collision occurred at a point about 100 feet eastward of the drilling-machine, and nearly three hundred feet to the southward of it, and when the Connecticut was about two-thirds of her length inside the drilling machine and heading for about pier 8, East River.

410 The Othello was then heading for about her intended and the usual course to pass between Coenties and Diamond Reef, and passing the former reef about three hundred feet to the southward (294, 430).

Sixth. The only course for the Othello to adopt on seeing the change of course of the Connecticut was to stop and reverse. She could not have starboarded and passed under the tail of the tow and still have gone out between Coenties and Diamond Reef. In order to do this she must shape her course by porting off Montague street, being not to exceed three hundred feet to the southward of Coenties Reef. The sand spit and shallow channel prevented her from going down Buttermilk Channel. If she had starboarded and kept on when the Connecticut first changed her course, she would either have run into the tail end of the tow or brought up on the Brooklyn shore.

Seventh. The Connecticut had the whole river on her starboard hand, and could have kept on her course and passed on the port side of the Othello, or laid still and waited until the Othello had passed by before swinging round on to the New York shore.

Eighth. The Connecticut made her change of course to cross the bows of the Othello, without any signal whatever, and ran on that course until 55–58 seconds of the collision, or from the Brooklyn side of the centre of the river until her amidships was abreast of the up-river side of the drilling machine, before giving any signal at all (fol. 291), and then gave two blasts of her whistle; it was not until some time after that, and the Stevens had in the meantime drawn her still further across the bows of the Othello, that she gave three whistles as danger signals (240, 268). No answering signals were received by her from the Othello.

Ninth. The Othello was not observed at all from the Connecticut and Stevens until the latter vessels had reached about 100 feet above and

past the drilling-machine, when the drilling-machine was about opposite the amidships of the Connecticut (187, 281).

411 CONCLUSIONS OF LAW.

I.

The Connecticut should have kept her course.

II.

She should not have changed her course without some signal or warning of her intention so to do.

III.

She should have stopped and waited, after giving such signal, until she received an answering signal, before proceeding on.

IV.

After her change of course across the bows of the Othello, she had the latter vessel on her own starboard hand, and was therefore bound to avoid her.

V.

If, therefore, she took the hazardous chance of crossing the bows of the Othello, she became the insurer against all the consequences of such act.

VI.

She should not have attempted to monopolize the channel, by an unwieldly and unmanageable tow. She should have divided the tow into sections.

VII.

The Stevens is alike chargeable with the Connecticut in the respects above mentioned, and in that she ran—

VIII.

Wide open and at a too great rate of speed.

IX.

The decree should be reversed, and the libel dismissed as to the Othello.

BEEBE, WILCOX & HOBBS,
Proctors for the Othello.

412 The judge thereafter, and after time taken for consideration filed with the clerk of the circuit court findings of fact and conclusions of law as found by the court, of which the following is a copy.
(Take in same.)
And also filed with said clerk his opinion as follows:
(Take in same.)

413 And thereafter upon notice thereof such proceedings were had in said circuit court that on or about the 23d day of October, 1877, a decree was entered bearing date October 13th, 1877 wherein it was ordered, adjudged, and decreed that said decree of said district court against said steamship Othello as the sole party in fault be reversed and that libellant recover the damages by him sustained against the said steamboat Connecticut and said steamship Othello as caused by their concurrent negligence, said damages to be equally apportioned between them, and referring it to B. Lincoln Benedict, esq., one of the commissioners of the court, to ascertain the amount due to the libellant and to report thereon with all convenient speed. That the said commissioner made his report dated the 5th day of November, 1877, and

414 that thereafter and on or about the 24th day of November, 1877, a final decree was entered bearing date the 22d day of November, 1877, reversing or modifying said final decree of said district court as above mentioned and ordering, and adjudging, and decreeing that the report of said commissioner be confirmed and that the libellant recover from the said steamboat Connecticut, her engine, &c., or her said claimant, and the said steamship Othello, her engine, &c., or her said claimant, damages, interest, and costs, amounting together to sixteen thousand seven hundred and sixty-four and $\frac{25}{100}$ dollars ($16,764\frac{25}{100}$), and further ordering that as between the respective claimants of said Connecticut and said Othello said amount be paid by the respective claimants in equal parts, and that if either were unable to respond the other should be responsible as therein provided.

415 And further affirming so much of said decree of said district court as dismisses the libel as to the S. A. Stevens with costs, and ordering, adjudging, and decreeing that the claimants recover costs in the district and circuit courts amounting in all to one hundred and nineteen and $\frac{83}{100}$ dollars.

And thereafter the claimants of the steamboat Othello have taken appeals from said final decree to the Supreme Court of the United States, and the libellant has also taken an appeal from so much of said final decree as dismisses this libel against the S. A. Stevens, with costs.

FIRST EXCEPTION.—For that the said judge did not find the facts stated in the fifth proposed finding of fact as above set forth.

416 SECOND EXCEPTION.—For that the said judge did not find the facts stated in the sixth proposed finding of fact set forth.

THIRD EXCEPTION.—For that the said judge did not find the facts stated in the seventh proposed finding of fact above set forth.

FOURTH EXCEPTION.—For that the said judge did not find the facts stated in the eighth proposed finding of fact above set forth.

FIFTH EXCEPTION.—For that the said judge did not find the facts stated in the ninth proposed finding of fact above set forth.

SIXTH EXCEPTION.—For that the said judge did find that if proper care and attention had been given, the persons on the Othello would have heard signals given from the Connecticut.

417 SEVENTH EXCEPTION.—For that the said judge did find that if the engine of the Othello had been reversed immediately upon making the signals of two blasts by the Connecticut, her headway could have been entirely checked before reaching the tow, and the collision which did occur could, and would, have been avoided; but that her engines were not not so reversed until the Othello was within an eighth of a mile from said tow, and too late to prevent a collision.

EIGHTH EXCEPTION.—For that the said judge did not find that the headway of the Othello was not stopped at the time of said collision.

NINTH EXCEPTION.—For that said judge did not find that the Othello did not stop and reverse her engines as soon as she received any
418 warning that a collision between the Othello, the Connecticut and her tow was inevitable.

TENTH EXCEPTION.—For that said judge did not find the conclusions of law stated in the first proposed conclusion of law above set forth.

ELEVENTH EXCEPTION.—For that said judge did not find the conclusions of law stated in the second proposed conclusion of law above set forth.

TWELFTH EXCEPTION.—For that said judge did not find the conclusions of law stated in the third proposed conclusion of law above set forth.

THIRTEENTH EXCEPTION.—For that said judge did not find the conclusions of law stated in the fourth proposed conclusion of law above set forth.

FOURTEENTH EXCEPTION.—For that said judge did not find
419 the conclusion of law stated in the fifth proposed conclusion of law above set forth.

FIFTEENTH EXCEPTION.—For that said judge did not find the conclusions of law stated in the sixth proposed conclusion of law above set forth.

SIXTEENTH EXCEPTION.—For that said judge did not find the conclusion of law stated in the seventh proposed conclusion of law above set forth.

SEVENTEENTH EXCEPTION.—For that said judge did not find the conclusion of law stated in the eighth proposed conclusion of law above set forth.

EIGHTEENTH EXCEPTION.—For that said judge did not find the conclusion of law stated in the ninth proposed conclusion of law above set forth.

NINETEENTH EXCEPTION.—In that the said judge did find that the Othello was guilty of negligence in not heeding the signal of the
420 Connecticut of two blasts of her whistle.

TWENTIETH EXCEPTION.—In that the said judge found that the Othello was guilty of negligence in not reversing her engines sooner than she did.

TWENTY-FIRST EXCEPTION.—In that the said judge found that the Othello was not free from fault, and that the loss of the Sam Morgan and her cargo resulted from the concurring negligence of the Othello.

TWENTY-SECOND EXCEPTION.—In that the said judge found that the damages on account of said collision should be apportioned as to the Othello.

TWENTY-THIRD EXCEPTION.—In that said judge did not find that the collision herein was owing to the occurring negligence of the steamer S. A. Stevens, and that she was guilty of the same acts of negligence and violation of the rules of navigation as the steamboat Con-
421 necticut.

TWENTY-FOURTH EXCEPTION.—In that said judge did not find any facts as to the S. A. Stevens.

And inasmuch as the said several matters produced and given in evidence on the trial in said circuit court and by the counsel for the claimants of the steamship Othello and the said exceptions do not appear by the record of the decree of the said judge, the counsel for said claimants of the steamship Othello has proposed and caused the bill of exceptions to be settled as a record thereof according to the form of the

statute in such case made and provided and the course and practice of the courts, and to be signed and ordered on file by the judge.

WARD HUNT,
Asso. Justice Sup. C't U. S.

(Endorsed:) Bill of exceptions. Filed May 25th, 1878.

422 *Notice of appeal on the part of the steamship Othello.*

U. S. circuit court, eastern district of New York.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
against
THE STEAMBOAT CONNECTICUT, HER ENGINES, &c., Schuyler Steam Tow-Boat Line, claimant, the steam tow-boat S. A. Stevens, her engines, &c., Willliam H. Foote & Samuel Schuyler, claimants and appel'ees, and the steamship Othello, her engines, &c., Charles Wilson and Arthur Wilson, claimants and appellants.

Take notice that Charles Wilson and Arthur Wilson, claimants, of the steamship Othello, her engines, &c., above named, hereby appeal to the Supreme Court of the United States from the whole and
423 every part of the decree entered in the above-entitled cause on the twenty-fourth day of November, 1877, in so far as the said decree condemns the said steamship Othello, her engines, &c., or adjudges or decrees that the libellant recover against or from the said steamship Othello, her engines, &c., or the claimants thereof, the damages by him sustained by reason of the matters alleged in the libel, or as reported by the commissioner's report therein referred to, with interest and costs as therein adjudged to be paid, or any part of said damages, interest, or costs, in so far as the same condemns or charges the said steamship Othello, her engines, &c., or her claimants for or with any negligence or default in respect to the collision therein sustained or referred to, or for the payment of any damages, interest, or costs.

Dated December 10th, 1877.

BEEBE, WILCOX & HOBBS,
Proctors for Claimants of the Steamship Othello.

To JAMES K. HILL, Esq.,
Libellant's Proctor.
P. LINCOLN BENEDICT, Esq.,
Clerk, &c.

(Endorsed:) Notice of appeal. Filed May 28th, 1878.

424 U. S. Supreme Court.

MADISON M. CALEB
vs.
THE STEAMBOAT OTHELLO, HER ENGINES, &c., impleaded with the steamboat Connecticut.

We consent that the time to perfect the appeal herein be extended 10 days from date.

May 15, 1878.

JAS. K. HILL,
Proctor for L'b'l't & Appellee.

We consent that the time to perfect the appeal herein be extended 3 days from date.
May 25th, 1878.

JAMES K. HILL,
Proctor for L'b'l't.

(Endorsed:) Consent to extend appeal. Filed May 25th, 1878.

425 Supreme Court of the United States.

MADISON M. CALEB, LIBELLANT & APPELLANT,
against
THE STEAMBOAT CONNECTICUT, HER ENGINES, &c., Schuyler Steam Tow-Boat Line, claimant and appellant, the steamboat S. A. Stevens, her engines, &c., William H. Foote & Samuel Schuyler, claimants and appellees, and the steamship Othello, her engines, &c., Charles Wilson and Arthur Wilson, claimants & appellants.

To the honorable the Supreme Court of the United States:

The petition and appeal of Charles Wilson and Arthur Wilson, claimants of the above-named steamship Othello, her engines, &c., appellants, respectfully showeth:

426 That on or about the thirtieth day of September, 1875, the above-named libellant filed his libel in the district court of the United States for the eastern district of New York against the steamboats Connecticut, S. A. Stevens, the steamship Othello, and the steam-tug N. B. Starbuck, their engines, &c., in a cause of collision and damage to which libel the appellant refers for further particulars. That the said collision occurred between the libellant's boat, the Sam Morgan, in tow of the said steamboats Connecticut and S. A. Stevens, and the said steamship Othello, in the East River, in the State of New York. That, therefore, on or about the day of November, 1875, the claimants of the said steamship Othello, above named, having executed and filed the necessary stipulations for costs and value, did file their claim

427 and answer to said libel, to which reference is made; and such proceedings were afterwards had in such cause that on the twenty-seventh day of November, 1876, a final decree was made and pronounced therein by said district court wherein it was decreed that the said libel as against each of the said steamboats Connecticut, Sarah A. Stevens, and N. B. Starbuck, their engines, &c., be dismissed with costs, and that the libellant recover against the said steamship Othello, her engines, &c., the damage*d* sustained by reason of the collission in the pleadings mentioned with costs; and that after such final decree, appeals were taken to the circuit court of the United States for the eastern district of New York by the said libellant from so much thereof as dismissed the libel against the steamboats Connecticut and S. A. Stevens, and by the claimants of the steamship Othello from said decree or so much thereof as condemned the said steamship

428 Othello, her engines, &c., and the said cause was removed thereby to the said circuit court and tried anew, and such proceedings were had in said circuit court that on or about the twenty-third day of October, 1877, a decree was entered bearing date October 13, 1877, whereby it was ordered, adjudged, and decreed that said decree of

said district court against said steamship Othello, her engines, &c., be reversed and that the libellant recover the damages by him sustained, &c., against said steamboat Connecticut and the said steamship Othello, their engines, as caused by their concurrant negligence, said damages to be equally divided between them, and referring it to B. Lincoln Benedict, esq., one of the commissioners as of the court, to ascertain the amount due to the libellant and to report thereon with all convenient speed. That the said commissioner made his report, dated the fifth day of No-
429 vember, 1877; that thereafter and on or about the 24th day of November, 1877, a final decree was entered, bearing date the 22nd day of November, 1877, reversing or modifying said decree of said district court as above mentioned, and ordering, adjudging, and decreeing that the report of said commissioner be confirmed, and that the libellant recover from the said steamboat Connecticut, her engines, &c., or her said claimants and the said steamship Othello, her engines, &c., or her claimants, damages, interest, and costs, amounting together to the sum of sixteen thousand seven hundred and sixty-four $\frac{25}{100}$ dollars ($16,764\frac{25}{100}$), and further ordering that as between the respective claimants of said Connecticut and said Othello said amount be paid by the respective claimants in equal parts, and that if either were unable to re-
spond the other should be responsible as therein provided, and
430 further affirming so much of said decree of said district court as dismisses the libel as to the S. A. Stevens with costs, and ordering, adjudging, and decreeing that her claimants recover costs in the district & circuit courts amounting in all to one hundred and nineteen and $\frac{83}{100}$ dollars ($119\frac{83}{100}$.)

And these appellants are advised and insist that said decree is erroneous in so far as it is therein ordered, adjudged, and decreed that the libellant recover against or from the steamship Othello, her engines, &c., or her claimants, the damages by him sustained by reasons of the matters alleged in the libel, or as reported by the commissioner's report in the said decree referred to, with interest and costs as therein adjudged to be paid, or any part of said damage, interest, or costs, and so far as the same condemns or charges the Othello or her claimants
431 for or with any negligence or fault in respect to the collission therein mentioned or referred to, or for the payment of any damages, interest, or costs.

Wherefore the appellant for these and others reasons appeals from said decree of said circuit court in so far as it adjudges the said steamship Othello or their claimants to be liable for the damages from the collisions aforesaid, interest or costs or any part thereof, to the Supreme Court of the United States, and on the said appeal they intend to seek a new decision on the facts on the pleadings and proofs in the circuit court and other proofs to be produced in the Supreme Court and to make new allegations and pray different relief.

And it respectively prays that the said decree of said circuit court and the libels, answers, depositions, and proceedings in the said cause may be sent to the Supreme Court of the United States without
432 delay, and that the said Supreme Court will proceed to hear the said cause over, and that the said decree of the circuit court may be reversed as to said steamboat Othello, her engines, &c., or her claimants, and a decree made dismissing said libel with costs as to the Othello,

her engines, &c., or such other decree as to the said Supreme Court shall deem just.

Dated December 10, 1877.

BEEBE, WILCOX & HOBBS,
Proctors for Claimants of the Steamship Othello, her engines, &c.

Appeal allowed.

CHAS. L. BENEDICT.

May 28th, 1878.

(Endorsed:) Petition of appeal. Filed May 28th, 1878.

433 *Bond on appeal.*

Circuit court of the U. S. of America, eastern district of New York, in the second circuit.

MADISON M. CALEB, LIBELLANT AND APPELLANT,
vs.
THE STEAMBOAT CONNECTICUT, THE SCHUYLER TOW-BOAT LINE, claimant; the steamboat S. A. Stevens, William H. Foote, and Samuel Schuyler, claimants; the steamship Othello, Charles H. Wilson, and Arthur Wilson, claimants and appellants.

Know all men by these pr'sents that we, Charles H. Wilson and Arthur Wilson, Charles L. Wright, and Edward G. Tinker, are held and firmly bound unto the above-named Madison M. Caleb in the sum of sixteen thousand seven hundred sixty-four & $\frac{24}{100}$ dollars, to
434 be paid to the said Madison M. Caleb, for the payment of which well and truly to be made we bind ourselves, and each of us, our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-first day of February, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas the above-named Charles H. Wilson and Arthur Wilson, claimants of the steamship Othello, have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the eastern district of New York against the above-named steamship Othello and her claimants:

435 Now, therefore, the condition of this obligation is such that if the above-named appellants, Charles H. Wilson and Arthur Wilson, shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES H. WILSON AND ARTHUR WILSON, [L. S.]
By CHARLES L. WRIGHT, *Agent.* [L. S.]
CHARLES L. WRIGHT. [L. S.]
E. G. TINKER. [L. S.]

Sealed and delivered and taken and acknowledged this 21st day of February, 1878, before me.

[L. S.]

WM. H. RAFFERTY,
(147) *Notary Public, N. Y. City.*

UNITED STATES OF AMERICA,
Southern District of New York:

I approve the above bond and the sufficiency of the sureties thereto.

H. T. WING.

Dated March 20th, 1878.

436 (Endorsed:) Bond on appeal. Approved. Chas. L. Benedict. Filed May 28th, 1878.

437 By the honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit.

To MADISON M. CALEB:

Whereas Charles Wilson and Arthur Wilson, claimants of the steamship Othello, her engines, &c., have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said Madison M. Caleb, against the steamship Othello, her engines, &c., and has filed the security required by law; you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the 14th day of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Brooklyn, in the eastern district of New York, in the second circuit, the 27th day of May, in the year of our Lord 1878, and of the Independence of the United States the one hundred and second.

CHAS. L. BENEDICT.

438 (Indorsed:) U. S. Supreme Court. Madison M. Caleb vs. The Steamboats Connecticut, S. A. Stevens, and the Steamship Othello. Citation. Beebe, Wilcox & Hobbs, proctors for claimants of Othello.

Admit due service of the within May 29th, 1878.

C. VAN SANTVOORD,
Proctor for Connecticut.
JAS. K. HILL.

Filed May 28th, 1878.

439 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 437 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Madison M. Caleb, libellant, vs. The Steamboats Connecticut, S. A. Stevens, Othello, and N. B. Starbuck, their engines, &c., as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 18th day of September, A. D. 1878, and of the Independence of the United States the 103d.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

(Indorsement on cover:) No. 519. Schuyler's Steam Tow-Boat Line, cl'm'ts of the steamboat Connecticut, her engine, &c., appellants, vs. Madison M. Caleb. No. 520. Madison M. Caleb, appellant, vs. William H. Foote & Samuel Schuyler, cl'm'ts of the steamboat S. A. Stevens, her engines, &c. No. 521. Charles & Arthur Wilson, cl'm'ts of the steamship Othello, her engines, &c., appellants, vs. Madison M. Caleb. E. New York C. C. U. S. Filed 8th October, 1878.

EVENING POST PRINT, 208 B'way, N. Y.

OFFICE SUPREME COURT U.S.
FILED
JAN 18 1881
JAMES H. McKENNEY, Clerk

Supreme Court of the United States.

MADISON M. CALEB,
Libellant,

against

THE STEAM TOW BOAT "CONNECTICUT," her engines, &c., Schuyler's Steam Tow Boat Line, claimant and appellee; The Steam Tow Boat "S. A. Stevens," her engines, &c., William H. Foot and Samuel Schuyler, claimants and appellees; The Steamship "Othello," her engines, &c., Charles Wilson and Arthur Wilson, claimants and appellants.

Brief and Points for Libellant.

HISTORY OF CASE.

The libel in this action was filed in the United States District Court for the Eastern District of New York, on September 30, 1875, by Madison M. Caleb, as owner of the canal boat *Sam Morgan*, for himself and all others interested in said canal boat, her tackle, apparel and furniture, and the cargo laden on board of her, against the steam tow boats *Connecticut*, *S. A. Stevens* and the steamship *Othello*, and the steam tow boat *N.*

B. Starbuck, for the recovery of damages laid at $17,516, from a collision in the East river, New York, on the morning of Wednesday, August 18, 1875 (folios 1, 2, 3, 4, 5, 6, 7).

The action was tried in the District Court, and resulted in an opinion, delivered by the District Judge, on July 21, 1876 (fols. 237, 238), and the final decree thereon, November 27, 1876, directing that the libel against the steamboats *Connecticut, S. A. Stevens* and *N. B. Starbuck* bedismissed, with costs, and that the libellant recover in the action against the steamship *Othello* the damages by him sustained by reason of the collision, together with costs (fols. 235 and 236).

The owners of the steamship *Othello* thereupon appealed, and the libellant also appealed from so much of the final decree as dismissed the libel against the steam tow boats *Connecticut* and *S. A. Stevens*. Some new evidence was offered, and the Circuit Court modified the decree, in so far as it dismissed the libel against the *Connecticut*, holding both the *Othello* and the *Connecticut* in fault, and affirming the decree in so far as it dismissed the libel against the *S. A. Stevens*.

No appeal was taken from the decree of the court dismissing the libel as against the *N. B. Starbuck*.

The final decree of the Circuit Court, directing that the libellant recover the damages by him sustained against the *Othello* and the *Connecticut*, was entered October 23, 1877.

The findings of the Circuit Judge are at fols. 279–287, and his opinion at fols. 272–279.

The owners of the *Othello* and *Connecticut* thereupon appealed to this court, and the libellant also appealed from so much of the final decree of the Circuit Court as affirmed the decree of the District Court dismissing the libel, with costs, as against the *S. A. Stevens*.

Statement.

Early on the morning of August 18, 1875, the canal boat *Sam Morgan*, owned by libellant, laden with grain, with other boats was being towed by the steam tow boat *Connecticut*, assisted by the steam tow boat *S. A. Stevens*, the *Stevens* being made fast to the starboard side of the *Connecticut* (folio 36).

The tow consisted of five tiers of five boats each (folios 36, 60), and the *Morgan* was the outside boat on the starboard side, in the first tier (folio 36).

The tow was attached to the *Connecticut* by a hawser 200–250 feet long (folio 61); the entire length of steamboat, hawser and canal boats was 1,050 feet (folio 68).

At about five o'clock in the morning in question, the tow, on its progress from Albany. had reached the Battery, in the port of New York, on its way to the Coenties slip (folio 36), the usual and customary place for landing canal boats. The tide was slightly ebb in the Hudson river (folio 61), and was young flood in the East river (folio 68). There was very little wind, the weather was clear and it was broad daylight.

There were vessels in the harbor which prevented the tows rounding near the Battery, and the tow passed around the Diamond Reef, and between that and Governor's Island (folios 62, 127).

On passing the reef the tow took about the centre of the river, heading towards the Brooklyn shore (fols. 69–105), and proceeded up the river about 1,500 feet, the tow being straightened up its whole length (fol. 72).

About opposite pier 7 on the New York side, and about 600 feet from the end of said pier, was lying at the time a machine used for blasting and drilling a reef in the East river, known as the Coenties Reef (fol. 62). At this place the river is about three-quarters of a mile wide (fol. 98).

The tow proceeded up the East river until it had got about 100 feet above the drilling machine. The steam tow boats then changed their course and turned toward the New York side and to the westward (fol. 94). The engines of the *Connecticut* were stopped, but those of the *Stevens* were working ahead (fol. 62), the purpose being to let the flood tide swing the tow around and up the East river and then to draw said tow down between the pier and said drilling machine, in order to land at Coenties slip.

The steam tow boats had got about 75 feet past the drilling machine towards the New York shore, and the canal boats were stretching across the river towards the Brooklyn shore, when the collision afterwards described occurred.

At about 5 o'clock on the morning in question the steamship *Othello* left her dock, at pier 44, East river (fol. 158), and

headed a course down about the middle of the river, on her way to sea (fol. 175).

When above Fulton Ferry, those in charge of said steamship discovered the tow, which was then heading on a course up the river and toward the Brooklyn shore (fols. 175–186). The *Othello* and the steam tow boats and tow were then on courses which, if continued, would have carried them clear of each other, port hand to port hand (fols. 161–175–183). The *Othello* maintained her course, heading for the regular and only ship channel for large vessels, which is between Coenties and Diamond reefs (fol. 160). She was moving at a speed of about four knots an hour (fol. 187).

The steam tow boats then changed their course toward the New York shore, and the *Connecticut* gave two blasts of her steam whistle, signifying that she wished the *Othello* to pass to starboard (fols. 64–95). At this time the *Othello* was at least a quarter or a half a mile away (fol. 65), and with the headway she had could easily have been stopped, it being impossible for her to have passed to starboard of the tow, their being no room for her on the Brooklyn side.

The *Othello* made no response to the signal of the *Connecticut* (fols. 64, 105, 187), but continued on her course, heading for said tow. The *Connecticut* then gave several rapid and successive blasts of her steam whistle (fols. 64–95), but the *Othello*, without giving any response whatever, came on and struck the canal boat *Morgan* on her starboard side, near the first hatch, cutting her in half, so that she sank with all her cargo, and became a total loss.

POINTS.

I.

It is conceded that said collision, and consequent damages sustained by the libellant, were in no way the fault of or caused by the libellant, or those on board of said canal boat *Morgan*, at the time of said collision, and that the libellant is entitled to recover from one or more of the steam vessels proceeded against.

II.

The steam tow boat *Connecticut* was at fault in, among other things, the following particulars :

(*a.*) Her pilot and captain failed to keep a careful lookout. They did not see the *Othello* at all until the *Connecticut* changed her course so as to be heading nearly or quite across the river, although the *Othello* had been slowly coming down the river for three-eighths of a mile above Fulton ferry, and in plain sight of the *Connecticut*.

(*b.*) The *Connecticut* being on a course which would carry her clear of the *Othello*, port hand to port hand, suddenly, and without any warning to the *Othello*, changed her course to one directly across the bow of the *Othello*, and across the only channel through which the *Othello* could pass on her way to sea.

She attempted to swing a tow 1,050 feet long around in a narrow river, producing thereby an obstruction to navigation, without giving any notice whatever of her intention so to do.

III.

The steam tow boat *S. A. Stevens*, was in fault in the same particular as was the *Connecticut*.

IV.

The steamship *Othello* was in fault, in, among other things, the following particulars :

(*a.*) Although those in charge of the *Othello* noticed the *Con-*

necticut when they were off Fulton Ferry, a half a mile from the place of collision, they did not discover that she had a tow astern (fol. 167), although it was light and clear, until so near as to render a collision imminent.

(*b.*) She did not observe the change of course made by the steam tow boats and their tow.

(*c.*) She did not hear, or if she did hear, paid no attention to and made no response to the signals of the *Connecticut* (fol. 170).

(*d.*) Upon the signals being given by the *Connecticut*, the *Othello* did not stop and back and thus avoid the collision, as she might easily have done, she being at that time at least one-quarter of a mile away from the steamboats and their tow, and moving through the water at the rate of but four knots an hour, and against the tide.

V.

The opinion of the Circuit Court should be so far modified, or changed, as to adjudge and decree that the libellant and appellant in this action recover the damages sustained by him by reason of said collision, against the steam tow boat *Connecticut* and the steam tow boat *S. A. Stevens* and the steamship *Othello* jointly, with costs.

HENRY T. WING,
Counsel for Libellant and Appellant.

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OFFICE SUPREME COURT U. S.
FILED
MAR 1 1881
JAMES H. McKENNEY, Clerk.

U. S. Supreme Court.

SCHUYLER'S STEAM TOW BOAT Line, Claimant of the Steamboat Connecticut, her Engines, &c.,
Appellant,
vs.
MADISON M. CALEB,
Libellant.

Brief and Points of Claimant of the Connecticut, Appellant in this Court.

First—Statement of the Case.

(1.) This is an appeal by Schuyler's Steam Tow Boat Line (a corporation duly incorporated under the laws of the State of New York), claimant of the steamboat *Connecticut*, her engines, &c., appellant in this court, from the whole and every part of the decree of the Circuit Court of the United States for the Eastern District of New York, entered with the clerk of that court on the 24th day of November, 1877, bearing date the 22d day of November, 1877, in the cause of Madison M. Caleb, libellant and appellant in the Circuit Court, against the steamboat *Connecticut*, her engines, &c., Schuyler's Steam Tow Boat Line, claimant and appellee, the steamboat *S. A. Stevens*,

her engines, &c., William H. Foote and Samuel Schuyler, claimants and appellees, and the steamship *Othello*, her engine, &c., Charles Wilson and Arthur Wilson, claimants and appellants, so far as the same reverses so much of the decree of the District Court, as dismisses the libel as to the *Connecticut*, and so far as it is therein ordered, adjudged and decreed, that the libellant recover against or from the steamboat *Connecticut*, her engine, &c., or her claimant, the damages by him sustained by reason of the matters alleged in the libel, or as reported by the commissioners report therein referred to, with interest and costs, as therein adjudged to be paid, or any part of said damages, interest, or costs; and so far as the same condemns or charges the *Connecticut*, or her claimant, for or with any negligence or fault, in respect to the collision therein mentioned or referred to, or for the payment of any damages, interest, or costs.

(2.) The libel was filed in the U. S. District Court for the Eastern District of New York, September 30, 1875, by Madison M. Caleb, as owner of the canal boat *Sam. Morgan*, her tackle, &c., for himself and all others interested in the canal boat, her tackle, &c., and the cargo laden on board, against the steam tow boats *Connecticut*, *S. A. Stevens*, and the steamship *Othello*, and the steam tug *N. B. Starbuck*, their engines, &c., in a cause of collision and damage, for the recovery of damages for the loss of the canal boat, with her tackle, &c., freight of the cargo laden on board, loss of cargo of grain and personal effects of the crew, amounting, as alleged, to $17,576, from the steamship *Othello* running into the canal boat, on the 18th day of August, 1875, in the East river, while the canal boat was in the tow of the *Connecticut*, at that time endeavoring to effect a landing of the boats in her tow at Coenties slip, or on the New York shore of the East river, within 7 or 8 piers of the Battery, under the circumstances detailed in the libel. The *S. A. Stevens* was included in the libel by reason of her being employed as a helper to assist the *Connecticut* in steering, and the *Starbuck* because of being alongside the *Othello*. The *Starbuck* was left out after the libel as to her was dismissed in the District Court. The *Stevens* has been kept in as an appellee in the Circuit Court and in this.

The Libel.

(3.) In the libel it is alleged (4th Art.) that on or about 16th of August, 1875, the owners of the *Connecticut*, in consideration of a reasonable sum then and there agreed to be paid by libellant, undertook and agreed to tow said canal boat with her said cargo from Albany down the Hudson river to the port of New York, and thereupon made up a tow of about fifty canal boats, in about ten tiers, of five boats abreast, with libellant's boat on the outside in the head tier, on the starboard side of said tow, and fastened in said tow and to said steam tow boat in the usual and customary manner.

That the tow thus made up, the said steam tow boat *Connecticut* proceeded with said tow down the Hudson river, and arrived in safety off the Battery, in the port of New York, at about six and a-half o'clock, on Wednesday morning, the 18th day of August, 1875, where said steam tow boat was joined by the said steam tow boat *S. A. Stevens*, as a helper, coming alongside on the starboard side of the *Connecticut* to help direct the steerage and course of the *Connecticut;* and said tow and said two steamboats proceeded on into the East river with said tow, it being at the time light and clear, with no wind of any consequence, and the tide flood.

That about opposite Pier 7 in the East river, on the New York side, and about 600 feet from the end of the said pier, was lying at that time a machine used for blasting and drilling a reef in the East river.

That the said steam tow-boats *Connecticut* and *S. A. Stevens* shaped their course to go outside of said drilling machine and proceeded on to a point a little beyond said drilling machine, and then hauled in towards the New York piers, and stopped and reversed their engines and brought said boats to a stand still in the water, for the purpose of having the tide swing said tow around up the East river, and then of drawing said tow down between the piers and said drilling machine, in order that the boats in said tow might be landed in Coenties slip, the usual and customary place for landing canal boats.

That while said steam towboats were at a standstill in the water, as before mentioned, and said canal boats were swinging on the tide the steamship *Othello*, with the steam tug *N. B.*

Starbuck on her starboard quarter, was seen coming down about opposite Fulton Ferry slip, on the Brooklyn shore.

That soon after the said steamship and steam tug were seen by those on the *Connecticut* and *S. A. Stevens*, the latter vessels blew their steam whistle, but received no response whatsoever from the said steamship and steam tug, but they continued on at a high rate of speed for said tow. That the said steam tow. boat *Connecticut* then gave several rapid and successive blasts of her steam whistle, but the said steamship and steam tug paid no attention, and gave no response whatsoever, to the same, but came on at a high rate of speed, and ran with great force and violence the bow of the said steamship *Othello* into libellant's boat, the *Sam Morgan*, on her starboard side, near the first hatch, striking a square and direct blow, and cutting the said canal boat right in half, so that said canal boat with all her cargo sank at once and became a total loss.

Answer of the "Othello."

The answer of the claimants of the *Othello* (in the 4th article) to the foregoing statement from the libel is, that as to a large part of the allegations contained in the fourth article of the libel, they have no information or knowledge, and, therefore, deny the same, and that as to such matters stated in said article, as they have any knowledge or information of, they deny the same, except where the same are therein (in said answer) specifically admitted.

In the Seventh Article.—These respondents, upon information and belief, state that the said steamship, *Othello*, forms one of a line of steamers between the port of New York and Hull, in England. That the berth of the said steamer is at Pier 44, East river, when in the port of New York, and that her sailing day was on the 18th day of August last, and that morning, at about 5 o'clock in the morning, the morning being hazy, and the tide strong flood, and the said steamer then lying with her stern out, the lines were cast off, and the steamer backed out from her berth assisted by the steamtug *N. B. Starbuck*.

That having backed out clear of the wharves and piers, the said steamtug pulled her head or stem round head to the tide, and when thus straightened down the river, she was well out into or nearly the middle thereof. That the said steamer having been thus headed down, proceeded down the river at a slow rate of speed. That at 5 o'clock and twenty-five minutes the tug cast off from towing ahead, the steamer then having complete command of herself, and came alongside of the starboard quarter of the said steamship, and then made fast for the purpose of taking off the luggage of a passenger.

That after the steamer had thus got under way, a steamboat, which turned out to be the steamer *Connecticut*, was discovered off, well off the port bow of said steamer and ahead of her and running in parallel lines, or substantially so, with the said steamer and upon a course which, if both vessels kept their respective courses, would have carried them a safe distance apart. The said steamer having a very large fleet of canal boats in tow, made up of a large number of tiers, and which were towed by a hawser extending from the stern of said steamboat some five or six hundred feet.

That while the said steamer was keeping slowly and steadily in her course down the East river, the said steamboat having a steam tug along her starboard side, which turned out to be the *S. A. Stevens*, without any previous signal or indication of her intention to so do, suddenly changed her course toward the New York shore and across the bows of the said steamer. That the instant the change was made on the part of the said steamboat indicating her intention to cross the bows of the said steamer, the bells were sounded to stop and back, and at the same time the steam tug *N. B. Starbuck* was hailed to aid the steamer by backing strong, all of which orders and hail were instantly and promptly obeyed.

That the said steamboat *Connecticut* kept her headway there by bringing her tow gradually broadside to the tide until she had crossed the bows of the steamship not only her own length, but also the length of the hawser by which she was towing the said tow, and until the hawser tier of the said tow had been drawn [across] opposite to or abreast the stern of the starboard boat in said tow, being the said canal boat *Sam Morgan.*

That in the meantime the said tow was feeling the full

strength and power of the full flood, and was being rapidly swept up the East river, and which velocity was increased by the stopping of the machinery of the steamboats.

That before the actual collision, the headway of the said steamship had been very nearly, if not entirely, overcome, and the sweeping force of the tide swept the broadside of the said canal boat upon and against the stem of the steamship, and thus causing the injuries by which she sunk. * * That the only thing it was possible for the steamer to do upon the change of course of the said steamboat was to stop and back, which was promptly done.

Answer of "Connecticut."

In the answer of the *Connecticut* (Fifth Article), the case is thus stated: That the steamboat *Connecticut*, in the prosecution of the business in which she was engaged, as a steam tug, in towing boats, barges and other vessels on the Hudson, between Albany and New York, and intermediate places, left the City of Albany, bound for New York, on Monday, the 16th day of August, 1875, between 4 and 5 o'clock P. M., with such boats, barges and other vessels in her tow as had applied to be towed by her down the river from Albany to their place of destination, and were taken in her tow there, among which was the canal boat *Sam Morgan*, bound for the usual landing place of like canal boats, on the East river, in the port of New York, which the said steamboat *Connecticut* agreed or had agreed, in consideration of the agreed rate of towage, to tow to New York with the other boats and barges applying and taken in tow, under the obligation to use all ordinary and reasonable care and skill in the performance of such service, and under no other or greater obligation for the safety of said boat and cargo.

That the tow of the said steamboat *Connecticut* on leaving Albany was made up of not exceeding in all thirty-two boats, barges and vessels, in about five tiers or rows, of five boats abreast, with the boat SAM MORGAN on the outside in the *head*

tier, on the *starboard* side of that tier, which said boats were fastened or tied together in the usual manner, and the whole towed aft the steamboat by hawsers from the head tier to aft of the steamboat, in the usual and customary way.

That on her passage down the river, she picked up other boats at intermediate places, and dropped some of those taken in her tow at Albany, so that when the *Connecticut had* arrived off the *Battery in New York*, in the North river, and thereafter, the *number* of boats in tiers or rows in her tow, towed astern by hawsers, did not exceed twenty-five boats, in five rows, of five abreast.

That the *Connecticut* arrived with the boats in her tow, which were bound to their landing places in the East river, including the canal boat *Sam Morgan*, in good safety *off the Battery*, in the North river, in the port of New York, about five o'clock in the morning of Wednesday, the 18th day of August, 1875.

Before coming down off the lower end of the City, and when about off Bull's Ferry, the hawsers by which the boats aft were towed were shortened, as usual, to secure better control of the boats towed, and the *Connecticut* was joined by the steamtug *Sarah A. Stevens*, when off pier two North river, as a helper, to assist the *Connecticut* with her tow on going round into the East river, and, on coming round into the East river, the said helper was on her *starboard* side, to help direct the steerage and course of the *Connecticut* and her tow.

That before and when the *Connecticut*, with her boats in her tow, was going round into the East river, the *tide* in the NORTH river was toward *the last of the ebb*, and the *tide* in the *East river* was beginning to flow up that river in its flood; and there was no wind of any consequence, that the little there was of it was from the northeast; the weather was clear, and it was broad daylight.

That when the *Connecticut* was about going round off the *south* end of the Battery, into the East river, there were vessels at anchor on the New York side of the mouth or entrance of the East river, to the southward of the Battery, *obstructing the passage* into the East river on the New York side of its mouth, and there was a *machine*, used for drilling and blasting rocks under water, *at anchor* upon or in close proximity to a reef under water, known as *Coenties* reef, in the East river,

about opposite pier 7, on the New York side, and from six to eight hundred feet or thereabouts out in the river from the line of the ends of the piers.

That, to *avoid danger* from those *obstructions in entering the East river*, and in bringing her said tow to their usual landing places, between piers 2 and 9, on the New York side of the East river, and in the exercise of due care, the *Connecticut* entered and passed into the East river on the southerly side of its mouth or entrance, on a course which was entirely free from obstructions, to the southward of the *buoy on Diamond reef* so called, lying off between Governor's Island and New York in the East river; and after the *Connecticut* and her tow had passed beyond off said Diamond reef, her course was shaped up the river, and thence inclined in toward New York shore, to pass with her tow, off the up river or easterly side of said drilling machine, and thence round to the northward and down the river inside of said drilling machine, and off against the landing places as aforesaid, of the boats in her tow.

That in view of the obstructions aforesaid, of vessels off the south end of the Battery, on the New York side of the river, and of said drilling and blasting machine on that tide, the course so as above described, was the best practicable, and an entirely safe course for the *Connecticut* and the tow, in bringing said boats in her tow to their aforesaid landing place, and a usual and proper course.

That after the *Connecticut* had hauled in toward the City, and was standing in a direction by the compass about *north*, quartering across and up the river, but somewhat more inclined in toward the City than up, and was off to eastward of the said drilling machine, her engine was stopped, while that of her helper, the *S. A. Stevens*, on her starboard side, was working ahead, and in co-operation with the action of the tide on the boats towed astern, was *slowly* turning the *Connecticut* and tow around, so as to bring their sterns up the river, so that the *Connecticut*, with her tow, might pass down inside of said drilling machine, and drop her boats off against their aforesaid landing places.

That while the Connecticut was so standing, quartering across and up the river as aforesaid, and was stopped and with her tow was in the act of coming round as aforesaid, in stays as it were, making little or no headway through the water, the

steamship *Othello*, under steam, with a tug afterwards known to be the *Starbuck*, on her starboard quarter, was observed from the *Connecticut*, the said *steamship Othello then being about off the Brooklyn Ferry slip* of the Fulton Ferry, *and on the Brooklyn side of the river, and half a mile and more distant from the Connecticut*, and bound down the river, and thereupon two blasts of the steam whistle of the *Connecticut*, was blown as a signal to the *Othello* to pass to the eastward and southward, on which side there was plenty of unobstructed room for her to pass in safety.

That the persons in charge of the *Connecticut* receiving no response to her said signal by the steam whistle, and observing that the *Othello* and tug were making a course down the river at a high rate of speed, and on a line of movement pointing towards the *Connecticut's* tow, an alarm signal was blown from the *Connecticut* to the steamship, and the engine of the helper *S. A. Stevens* was stopped.

That no response was made from the *Othello* to either of these signals from the *Connecticut*. Nor so far as it appeared to the *Connecticut* was any attention paid to the presence of the *Connecticut* or her tow by those on board the *Othello* or her tug, and notwithstanding these signals from the *Connecticut*, and although the *Connecticut* and the boats in her tow were in plain sight and their *helplessness* evident to avoid a collision from a vessel running into them while coming around as aforesaid, the persons in charge of and navigating said *steamship*, through their missmanagement or carelessness, *made and kept a course directed for the boats* in tow of the *Connecticut*, and came at a high rate of speed, and ran with great force and violence, the stem of the *Othello* into the canal boat *Sam Morgan*, in the head tier of the *Connecticut's* tow, striking her on her starboard side and causing her to sink within a very short time, with whatever was on board.

(4.) The *Connecticut*, with her tow of twenty-five boats, in five tiers of five boats each, the *Morgan* being the starboard boat in the first tier, attached to the *Connecticut* by hawsers from her to the tow, two hundred to two hundred and fifty feet long, the entire length of the tow, steamboat, hawsers, and canal boats, one thousand and fifty feet, on its passage from Albany, had reached the Battery, Hudson river side, on its

way into the East river piers, at about five o'clock in the morning of the day in question, the tide slightly ebb in the Hudson, and young flood or commencement of the flood in the East river (p. 165).

At that time, about five o'clock in the morning, the *Othello* (according to the allegation in her answer, pp. 4 and 5, fol. 9) was lying at her berth, at pier 44 East river, New York side, when her lines were cast off from the piers, and she was backed out from her berth, with the assistance of the tug *Starbuck*, and, after having backed out clear of the wharves and piers, her head was pulled or slewed down the river to the tide, and straightened down the river by the tug, with a hawser to her bow, which was cast off at five o'clock and twenty-five minutes, "the steamer then having complete command of herself."

The case is that of a collision with the tow of a steam tow-boat, which entered the lower reach of the East river with a large tow, proceeding up on the tide, and which was endeavoring, under circumstances of difficulty and danger, because of obstacles in the river, to effect a landing of her boats at the lower end of this lower reach of the river, on the New York side, which the steam tow-boat and tow were powerless to prevent, the collision with the tow being by a steamship which, as the steam tow-boat was entering the river with her tow and proceeding up to the place off which she was to land her boats, was being backed out from her berth into the river, in an upper reach of it, and more than a mile above the place of the collision, and having her stem pulled round by a tug, so as to straighten her down the river, and getting under way.

(5.) The evidence upon which the cause was tried and determined in the Circuit Court was the same as in the District Court, with the addition only in the Circuit Court of the depositions of pilots called for the claimants of the *Othello*.

1. John Maginn.
2. John Henry Allice.
3. Bernard Brady.
4. Joseph Henderson.

In this new evidence the Circuit Judge found what he calls controlling evidence of a difference from the case, as presented on the evidence in the District Court, on the question whether

the *Othello* had channel-room to the eastward, or on the Brooklyn side of the tow, on which she could have passed the tow, as assumed by the District Judge in his opinion, and finds a width of channel between the two reefs of only 300 feet, without anything in the evidence to support his finding.

There is no such evidence in those depositions in the Circuit Court.

On the contrary, the new evidence as to room to pass off on the Brooklyn side of the tow confirms the evidence on that behalf in the District Court.

In the opinion of the District Judge it is said: It was the duty of the *Othello* to make a careful observation, and to pass to eastward, between the tow and the Brooklyn shore, thus permitting the tow to make the turn at the reef. This course could have been pursued without danger to the *Othello*, and without compelling her to go to the southward of the buoy; and the omission to pursue this course was a fault that renders her liable for the damage resulting.

In the opinion of the Circuit Judge (on 163) "the evidence taken in this court materially alters the aspect of the case. In one view I think its influence is controlling."

On 164: "The learned Judge of the District Court was justified, as the evidence was given before him, in holding that the *Othello* could have passed to the eastward of the tow near to the Brooklyn shore, and thus have avoided the danger."

"The evidence, as since given in the Circuit Court, puts an end to this theory. It is plainly proven that *this* channel is only *about three hundred* feet in width, and that with this tow of 1,050 feet extending out past Coenties reef, an eastward passage was quite impracticable. On this point the new evidence is controlling."

In his findings on page 166: "I find further, as matter of fact, that the *Connecticut* gave a signal by two blasts of her whistle that she wished the *Othello* to pass to her starboard, but that she did not give such signal until she had headed into the New York shore and was north of Coenties reef, and her tow was straightened out at length, the whole length of steamboat, hawsers and tows, extending over a space in the river of 1,050 feet, and that by reason of the space thus occupied by the *Connecticut* and her tow, there was *no channel left on the Brooklyn side of the river which the Othello could take with safety.*"

The Evidence in the District Court.

1. John B. Fountain, on page 63, was master and pilot of the steam tug *Atlas*, her business towing round the harbor and out to Sandy Hook; he had been in that business five years. On the morning of the 18th he was on the river, in the neighborhood where the *Connecticut* was coming in; he was by the drilling machine inside. On 63 and 64: He saw the collision between the steamship and canal boat.

On page 65: There was not anything in the way on the Brooklyn side of the river, it was entirely clear; he thinks there was plenty of room for the *Othello* to have passed off on the Brooklyn side of the tow; has towed large vessels up and down there; the water on the Brooklyn side—some places—there are thirty and forty feet water, and some places there is not so much; the channel is on the Brooklyn shore for large vessels, until you get down to Wall street ferry.

On page 74: There was room enough between the tail end of the tow for the ship to go to sea in the regular channel; the regular ship channel down there, is on the Brooklyn shore until you come down to about abreast of Wall s reet ferry, and then you come out towards Jersey City, to the southward of Coenties reef, and to the northward of Diamond reef.

2. George M. Tounard, captain of the *Stevens*, on page 78: The regular ship channel, generally goes down along Brooklyn shore, and hauls out to the northward of Diamond reef buoy; he had been down there with large ships. On page 79: The outer end of our tow was above that buoy; I can't tell exactly how far; there was room enough for a ship to pass between the out end of that tow and northward of the buoy.

3. Frederick Stebbins, captain of the tug boat *Conover*, and a pilot. On page 87: Have been tugging in the New York harbor about five or six years; the business of the *Conover* was towing about the harbor; on the morning of the 18th was lying at end of Pier 4, East river; she was lying there about the time the *Connecticut* was coming to; he saw the *Connecticut* and saw the steamer when she ran into the hawser tier.

On p. 88: Heard the second signal on the *Connecticut*; the

steamship was between Fulton and Wall street ferries; I passed her off about Wall street ferry; there was nothing in the way in the river on the other side, not that I could see; all clear; the tail of the tow was right across the river, as near as he could tell; he considered the steamer had plenty of room to pass on the Brooklyn side.

On page 89. The steamship was not on the usual course, which is to keep down on the Brooklyn shore, until you get to Wall street ferry.

The New Evidence in the Circuit Court.

1. John Maginn, Harbor Master. Previous to this appointment was pilot by way of Sandy Hook.

On p. 156. By Judge BEEBE:

Q. A propeller, loaded, 320 feet long, 36 feet beam, drawing 22 feet 6 inches water, backs out into the East river, bound to sea, from Pier 44, the tide being young flood, there being nothing in the way to prevent it, what course do you take in leaving East river—what would be the proper and the usual course? A. From the point of starting? Q. Yes. A. My course would be heading down for Governors Island until I reached Coenties slip, *keeping the Brooklyn shore well on board.*

Q. Then how? A. Then I should pass out between the two reefs, having Coenties reef on my starboard and Diamond reef on my port hand; in order to do that would have to port his helm to avoid the reef, say two and a half to three points; he would be within two or three hundred feet from Coenties Reef when he made the change to port; it would be controlled by circumstances.

It would be practicable to pass Coenties reef when going down the river from two to three hundred feet, passing into the channel between the two reefs, so that he would not touch one of them.

On *cross* 158: The direction of the upper reach of the river above Fulton ferry up the river is about east and west.

Passing from the upper reach of the river down into the lower reach, there is nothing to prevent her keeping the Brooklyn shore pretty well on board until she gets down opposite these reefs; when she gets down there she can go out on most any course; if she is more to the southward, then he has to haul more to the westward in going out between the reefs.

The channel between Diamond reef and Coenties reef, from rock to rock, is about 500 yards.

A vessel of this character going out between Coenties reef and Diamond reef, and keeping along the Brooklyn shore as far as prudent, and still keeping herself as close to Diamond Reef as possible could approach Diamond reef as near as, well 100 feet.

The channel between Diamond Reef and the Coenties Reef is deeper toward the Diamond Reef side. And there is good water all the way between those two reefs, something like 25 feet at the lowest tide.

In keeping the Brooklyn shore in hand would cross from Montague street.

The ŏther pilots agree with him.

See also Coast Survey Chart.

It was supposed the findings referred to could be taken advantage of by exception when supported by no evidence.

Being instructed since, that this was an error, it is submitted that as to the findings in the Circuit Court, as to room for *Othello* to pass the tow on the Brookly shore, the case should be remanded to the judge to resettle and correct his findings as he shall be advised.

II.—Correcting the errors of law involved in the findings of fact of the Circuit Court, and upon the application of well settled legal principles to the findings of fact in the judge's findings, the decree of the Circuit Court should be reversed, so far as it adjudges the *Connecticut* responsible as for contributory negligence, and the libel dismissed as to the *Connecticut*, with costs.

III.—The holding of the Circuit Judge in his opinion, and which is involved in his findings of facts, and in the decision of the case that the case of the *Connecticut* making a turn round the buoy on Diamond reef by reason of obstructions in the river on the New York side in making for off Coenties reef on which was the drilling machine to effect a landing of the boats in her tow, and the *Othello*, bound down the river, observing from above Fulton ferry one point or section of the *Connecticut's* track with her tow on passing Diamond reef, being, when the *Connecticut* was turned toward Brooklyn, is that of two vessels meeting on opposite courses, to which the sailing rules are applicable, requiring each to keep to the right and to pass port side to port side, is not founded upon any sound view of the purposes of those rules in practical working.

Their application to the circumstances of this case would be a perversion from the ends of those rules to purposes of chicane as a means of relieving the *Othello* from the consequences of a negligent and merely casual and temporary outlook in a case where careful or proper observation required of a ship of the power of the steamship would have disclosed to her, as she was getting under way, and passing down the river, the presence of the *Connecticut* and her tow. and enabled her to do what she ought to do to avoid, endangering boats in tow of the *Connecticut*, less manageable than herslf, either by the adoption of a proper course, or not increasing her speed or holding up.

The proposition in the opinion of the Circuit Court, that the *Othello* on noting the *Connecticut* at the section or point when the latter vessel and tow was turned towards Brooklyn shore, as or after passing the buoy on Diamond reef, and straightening up the river, had a right to assume, and could act on no other assumption than that the two vessels would pass each other port to port without further observation, stands upon principles obstructive to the safe navigation of harbors, and proper measures to effect a landing at any slip, wharf or pier of destination, and preventive of any landing without consent of vessels hauling out in the river, and about to come down in a harbor.

In practice, a vessel engaged in making a landing is entitled to complete it without unnecessary interference.

The opinion of the District Judge, it is submitted, stands on the better reason.

IV.—The blowing of the two whistles as a signal from the *Connecticut* to the *Othello*, as it is found by the Circuit Judge she did when the *Othello* was off at least one-quarter of a mile, and so far off that the *Othello* could then by stopping and backing have avoided the collision, was, as soon as there was apparent necessity for doing it, and a full performance of the requirement of Rule VI of the Pilot Rules for Lake and Seaboard in the revision of 1875, the only rule applicable to the case.

V.—The judge in his findings of fact, finds that on the morning of August 18, 1875, the canal boat *Sam. Morgan*, owned by the libellant, and laden with a cargo of grain, with other boats was being towed by the steamer *Connecticut*, asssited by the tug *S. A. Stevens*. There were on the tow five tiers of five boats, the *Morgan* was the starboard boat in the first or hawser tier; the tow was attached to the *Connecticut* by a hawser 200 to 250 long; the entire length of the tow, steamboat, hawser and canal boat 1,050 feet.

At about five o'clock on the morning in question, the tow on its passage from Albany had reached the Battery in the Port of New York on its way to the East river piers; the tide was slightly ebb in the Hudson river, and was young flood in the East river. There were vessels in the harbor which prevented a passage near to the Battery, and the tow passed between Diamond Reef and about one hundred feet southward of the reef.

On passing the reef the tow took the center of the river, or nearly so, straightened up its entire length, and heading towards the Brooklyn shore passed about 1,500 feet up the river above Diamond reef, and about 100 feet above the drilling machine, which was then on Coenties reef, holding the same general course. The *Connecticut* then turned westwardly, running across the river pointing towards Wall Street Ferry on the New York side. *She had stopped her* engines, but those of the Stevens were at work; she thus passed about seventy-five feetpast the drilling machine toward the New York shore,

and while at this point the collision hereinafter mentioned occurred.

The drilling machine was opposite to Coenties slip and about six hundred feet from the piers.

Diamond Reef is opposite the northeast end of Governors Island. At the Coenties reef the river is about three-quarters of a mile wide.

There are scattering rocks between Diamond reef and Governor's Island, which render it unsafe for a vessel like the *Othello* to attempt a passage between them.

There is a sand-spit along the Brooklyn shore, running down to Governor's Island and extending above the Coenties reef.

There is a ship-channel between Coenties reef and Diamond reef, and it is the only channel for a vessel of the size and draft of the *Othello*.

From Pier 44 East River to Diamond reef is one mile and three-eighths.

From Fulton Ferry to Diamond reef is about one mile.

From Wall Street Ferry to Diamond reef is about one-half mile.

From Wall Street Ferry to Coenties reef is about one-fourth of a mile.

From Fulton to Coenties reef is one-half mile.

From Coenties reef to Diamond reef is about one-half mile.

At about five o'clock of the morning in question the steamship *Othello* left her dock at Pier 44 East River, on one of her regular trips to Hull, England. After getting headed down the river, she took a course about in the middle of the river. *Above Fulton Ferry* her pilot saw the *Connecticut*, then in the vicinity of Diamond reef, well on his port hand. The *Othello* and *Connecticut* were then on courses that, if continued, they would have passed each other port to port, three hundred feet apart. The *Othello* maintained her course, heading for between Coenties and Diamond reefs, and so as to clear the former reef to the southward from 200 to 300 feet, which was the usual and proper course for steamers of her class. She was running half speed, or about four knots an hour. She was in charge of a licensed Sandy Hook pilot, who stood on the forward bridge. When the *Othello* reached a point in the river near to the Coenties reef the *Connecticut had passed* on her

course so far as to avoid collision, but the *Othello* came in collision with the *Sam Morgan*, being the starboard boat in the first tier of the tow of the *Connecticut*, cut her in two, and sunk her. The boat and the cargo were entirely destroyed.

I find further, as matter of fact, that the *Connecticut* gave a signal by two blasts of her steam whistle that she wished the *Othello* to pass to her starboard, but that she did not give such signal *until she had headed into the New York shore*, and was north of Coenties reef, and *and her tow was straightened out at length the whole length of steamboat, hawser and tow extending over a space in the river* of one thousand and fifty feet, and that by reason of the space thus occupied by the *Connecticut* and her tow there was no channel left on the Brooklyn side of the river which the *Othello* could take with safety. *At the time the signal of two blasts was given by the Connecticut the Othello was at least one-fourth of a mile from the Connecticut, and if proper care and attention had been given, the person navigating the Othello would have heard the said signal.*

I further find that if the engine of the Othello had been reversed immediately upon making the signal of two blasts by the *Connecticut, her headway could have been entirely checked before reaching the tow*, and the collision which did occur *could and would have been avoided*, but that her engines were not so reversed *until the Othello was within one-eighth of a mile from said tow, and too late to prevent a collision.*

I find that the *Connecticut* was guiltly of negligence in changing her course as hereinbefore, *without giving earlier notice* of her intention to do so than she did give, and in occupying without notice 1,050 feet of the river under the circumstances stated.

I find that the *Othello* was guilty of negligence in not hearing or heeding the signal of the *Connecticut* of two blasts of her whistle, and in not reversing her engines sooner than she did.

I find that neither the *Connecticut* nor the *Othello* was free from fault, and that the loss of the canal boat, *Sam Morgan*, resulted from the concurring negligence of the two steamers as a conclusion of law, &c.

On these findings we have the case of a collision from the reckless navigation of the *Othello* running into the tow of the *Connecticut*, as the proximate cause. The *Connecticut* engaged in making a landing for the boats in her tow with her engine

stopped, while the boats were swinging up with the tide, which the *Connecticut* and tow, in their helplessness, were powerless to avoid, but which the *Othello*, by ordinary and proper care, being herself manageable, might have avoided; and in which, upon the application of settled principles of law, the precedent or remote negligence of the *Connecticut* or tow in not giving earlier notice, &c., as found by the judge, cannot be imputed to the *Connecticut*, and does not charge her with responsibility as for direct or contributory negligence.

Upon the facts, as found by the judge, the decree of the Circuit Court holding the *Connecticut* responsible as for contributory negligence, should be reversed and the libel as to her dismissed with costs.

Davies *v.* Mann, 10 Mees & Wels, 545 (1842).
Greenland *v.* Chaplin, 5 Exch., 243 (1850).
Dowell *v.* Gen. St. Nav. Co., 5 Ellis & Black, 195 (E. C. L. R., 85) (1855).
Tuff *v.* Warman, 2 C. B. N. S., 740 (2 J. Scott N. S.) (1857), E. C. L. R., 89.
S. C., 5 C. B. N. S., 573 (5 J. Scott, N. S., in the Ex. Ch. (E. C. L. R., 94, (1858).
See for the principle, the *A. G. Brook*, the *Alice*, 1 Lowell's Decisions, 299, 300 at foot.

As to inapplicability of Ordinary Rules of Nav. under certain circumstances:

The *Scotch Greys* v. The *Santiago de Cuba*, 5 Fed. Rep., 369.
The *City of Troy v. Tug Atlas*, 9 Ben. D. Ct., 466.
Milbank *v. Sch. A. P. Cranmer*, 2 Fed. Rep. 255.

When about to make a landing the Great Republic 23 Wall 20 fol. 6

C. VAN SANTVOORD,
Of Counsel for the Claimants of the Conn. Appellant.

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SIMPSON'S LAW PRINTERY, 91 William St., N. Y.

SUPREME COURT U.S.
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SUPREME COURT

OF THE UNITED STATES.

SCHUYLERS STEAM TOW BOAT LINE, Claimant of the Steamboat Connecticut, her tackle, &c.,
Claimant and Appellant,

vs.

MADISON M. CALEB,
Libellant and Appellee.

MADISON M. CALEB,
Libellant and Appellant,

vs.

WILLIAM H. FOOTE and SAMUEL SCHUYLER, Claimant of the Steamboat A. S. Stevens, her engine, &c.,
Claimants and Appellees.

CHARLES WILSON and ARTHUR WILSON, Claimants of the Steamship Othello, her tackle, &c.,
Claimants and Appellants,

vs.

MADISON M. CALEB,
Libellant and Appellant.

Points and Statement of Facts on the part of the Steamship "Othello."

Four vessels were proceeded against by the libellant, to wit: the steamship Othello, the steamboat Connecticut, the steamboat S. A. Stevens, and the steamtug N. B. Starbuck. The libel as to the steamboat Connecticut, the steamboat S. A. Stevens, and the steamtug N. B. Starbuck was dismissed, and there was a decree against the Othello alone.

No appeal was taken from the decree dismissing the libel as to the N. B. Starbuck, and she is dismissed from the case. An appeal was taken to the Circuit Court on the part of the libellant as to the decree dismissing the libel as against the Connecticut and the S. A. Stevens, and on the part of the claimants of the Othello as to the decree against her.

The Circuit Court apportioned the damages between the Othello and the Connecticut, holding both in fault, and dismissed the libel as to the S. A. Stevens.

From so much of the decree of the Circuit Court dismissing the libel as to the S. A. Stevens, the libellant appeals to this Court. From so much of the decree holding the Connecticut in fault, the claimant of the Connecticut also appeals to this Court, and from so much of the decree as holds the Othello liable the claimants of the Othello appeal to this Court, so that the case comes before this Court on those distinct appeals.

The opinion of the Circuit Court will be found at page 163 of the Record.

The findings of the Court will be found at page 165.

The interlocutory decree at page 167.

The final decree at page 169.

The request of the claimants to find facts and conclusions of law, will be found on page 171.

The Findings of the Court upon such requests will be found at page 175.

The bills of exceptions on the part of the Connecticut at page 177.

The requests of the Libellant as to findings of fact and conclusions of law as to S. A. Stevens will be found at page 189.

The bills of exceptions and findings of the Court will be found at page 194.

The requests as to findings of fact and conclusions of law on the part of the Claimants of the Othello will be found at page 200.

The bill of Exceptions settled on the part of the claimants of the Othello will be found at page 204.

I.

The District Court found the Othello in fault (fol. 238) for not going under the stern of the tow.

The Court was mistaken in that conclusion. It was the suggestion simply of the Court. The libel made no such charge.

The evidence in the Circuit Court shows that that course could not be pursued.

The tail of the tow was more than eight hundred and fifty feet to the southward of Coenties Reef, as it is admitted that the Connecticut was only half her length

inside the drilling machine, the tow then being straight across the river, as indicated in the Connecticut's diagram. If you allow for the "kink" in the tow, spoken of by Fournade (fol. 132), the tail of the tow must have extended at least seven hundred and fifty feet to the southward or Brooklyn side of Coenties Reef. There can be no dispute about this.

Now Maginn says, confirmed by three other experts (see testimony taken in the Circuit), that it was not possible for the Othello to pass so far to the southwaed of Coenties Reef. That the Othello could not pass further to the southward of Coenties Reef than from two to three hundred feet (Maginn, fol. 259), and safely pass out through the channel, between Coenties and Diamond Reef, which was the only course or channel for the Othello to have taken. As to any wrong course therefore, on the part of the Othello, that part of the case is disposed of, we submit.

II.

Was there any other error on the part of the Othello? This Court would not be governed, as we are, aware, entirely by the opinion of the Court below—but might hold her in fault for such other errors, as are clearly shown to have led to the collision. (See "Pennsylvania," *supra.*)

And, as preliminary to this consideration, we may be permitted to caution the Court as to a too great reliance on the testimony of witnesses, as to their judgment of time and distance. Fortunately, as to distances, we have a coast survey chart which can be safely relied upon; but we have no chart as to time, and must rely for that, to a great extent, on the judgment of witnesses. In but one or two instances was a watch or clock consulted. Of course, on the part of interested witnesses,

there is a tendency to inaccuracy as to time. Hall and Roosevelt on the Morgan, it is fair to assume, were to some extent in the interest of the Connecticut and the Stevens, and still we think their evidence entitled to greater weight than any of the other witnesses connected with the tugs and tow. Again, the preliminary to a consideration of this branch of the case, we remark that the Connecticut, Stevens, and tow were to be treated by the Othello, and are to be considered by the Court as *one vessel.*

Civilta, 6 Ben., 309, and other cases cited in our main points.

It may be important to classify the witnesses: There were on the Sam Morgan, John Hall, captain, and George Roosevelt, deck hand; on the Conneticut, Harvey Temple captain, and Sherman Frear, pilot, who were in the pilot house of the Conneticut, John Temple, deck hand, who was *aft by the bits*, Anthony Geoghan, look-out and deck hand. also on the aft deck by the bits, George Sporo, engineer; on the S. A. Stevens, George A. Fournade, her captain, at the wheel, and Abram Bush, her engineer.

On the Othello, Thomas Murray, a New York pilot, on the forward bridge, James Mills, port captain of the line, on the forward bridge a part of the time, James G. Rogers, captain of the Othello, and the middle bridge James Nibbs, engineer.

On the Starbuck were Jacob Brandon, captain, in the pilot house, and William Brown, engineer.

There were other witnesses on other vessels not necessary to classify.

(*a*,) Coming, then, to a consideration of the case, our theory is that the Othello was making her course down

the river, making a certain and defined course, as was the Connecticut up the river, and they therefore became subject to the rules of navigation applicable to vessels on such courses. The counsel for the Connecticut takes issue with us as to this proposition, and asserts that while the Othello was taking a course down the river, the Connecticut was on *no course at all.* He says the Connecticut was on a circling course.

We submit that he is mistaken, and that the evidence shows a different state of facts.

There is no dispute that the Connecticut rounded Diamond Reef. She claimed she passed abreast of it one hundred to one hundred and fifty feet off. Her pilot and the pilot of the Stevens, says that when abreast of Coenties Reef, they were from 150 to 200 feet off that Reef.

Now apply a rule to the Coast Survey Chart, parallel with a line between the two reefs, and according to this evidence, you have a straight line up the river, and not a circle. It is clear also, that it was the object of the pilots not to make a circle, but to take the shortest course between the two given points.

The evidence of the pilots as to the course which they did take, agrees with this, (see evidence of Capt. Temple, fol. 67), Frear pilot of the Connecticut, (fol. 101, 102, 104 311 to 415; Tourmade, pilot of the Stevens, 381, Hall, 115-117.)

The course of the Connecticut therefore was straight up the river and not in a circle, as the course of the Othello was straight down the river.

(*b.*) Now, as to the speed of the Connecticut. There is no direct testimony, but Hall says, that from the time the Connecticut got abreast of Diamond Reef, until she got one hundred feet above the drilling machine, when

she had commenced to turn into the New York shore, would be from five to ten minutes, fol. 38). Taking the distance run in that time, that would make the speed of the Connecticut three miles an hour, to one and a half miles an hour. Allowing for any error of judgment, we think the Connecticut was running the distance at the rate of about 2 miles an hour. So much as to the Connecticut.

(*c.*) Let us now turn to the Othello. The counsel for the Connecticut has talked much about "two reaches of the river," which is a matter entirely unimportant in this case, for there was no difference in the heading of the Othello after she got straightened down on her course.

The evidence is that the Othello, when she backed out from her pier at 44, took a course to pass between Coenties and Diamond Reef (see testimony of pilot of Othello, fol. 161). That course which was the only course he could take, we assume to be west-southwest. This can be tested by applying a rule to the Coast Survey Chart. No one can imagine any reason for the pilot's taking any other than the usual ordinary course, which, as we find by the evidence of Magnin is to head down the river for Governor's Island till about abreast of Coenties Reef, and not more than 300 feet from it. Now, it was Murray's evidence that this course was just the course that he pursued (fols. 170, 171). And it must be observed, that the collision took place just about 300 feet to the southward of Coenties Reef, showing that this was the course actually taken. So much as to the *course* of the Othello.

(*d.*) What was the speed of the Othello? This can be accurately tested by the evidence of Nibbs, the engineer, who actually looked at the clock in the engine-room, who made a memorandum for the ship's log at the time; a matter for which engi-

neers are held to the strictest accountability on board of steamers. He says, we got steam on that morning at five o'clock; ten minutes after, we commenced moving the machinery; after we got under way I received a signal to stop and back full speed; at this time the vessel was running half speed; four knots speed. She had been so running half speed for twelve minutes, when I got the signal to stop and back full speed; I was standing at the turning wheel, right flanking the engine; when the signal came it was immediately obeyed; I continued to back for 10 minutes before I received the signal to stop backing. * * * * * * * * *

To shut off the steam, reverse the engine, and open steam on again takes just 12 seconds. At fol. 190, however, "the first signal I got was to go easy ahead, then half-speed ahead, then stop full speed astern. These signals from "easy head" to the signal half speed, was 12 minutes interval; between "half speed" and "stop full speed astern" was 7 minutes; between "stop and full speed astern" was 12 seconds; we would be going at between 3 and 4 knots on easy ahead, and at half speed, 4 knots."

It is prudent to take into this calculation that the tide, which we assume to be no more than half a mile an hour, as it was "young flood."

Hall.—"Just commenced to run flood" (fol. 39).

Roosevelt.—"Just flood" (fol. 48).

Wilbur.—"Just changing into flood" (fol. 56).

Temple.—"The very first of the tide" (fol. 61).

"A young flood in the East" (fol. 68.)

"I don't think it was over a quarter of a mile an hour—just the very first commencement of the flood" (fol. 83).

Frear.—Just the first of the ebb" (92.)

Fountain.—" Slackwater, as near as I could get to it" (111).

Fournade.—" Just making flood" (127).

This evidence of Nibbs shows that for seven minutes before the Othello's engine was stopped she had been run at four miles an hour, which would carry her almost half a mile, and for twelve minutes before that at sometning less than that. She had run the distance then from the time she got straightened down the river in 19 minutes, running the last half mile in seven minutes. The result of the calculation is, that the Othello was coming down the river for more than half a mile, at a rate of from 3 to 4 miles an hour.

We have, therefore, the Connecticut coming round Diamond Reef so that the tow would swing clear, and then straighten up on an east north-east course to Coenties Reef, at a speed of not more than two miles an hour, and then turning sharp into New York (*fols.* 135-6), *and we have the Othello coming down the river in the ordinary course down the channel, which was west south-west, at from three to four miles an hour.*

The Othello saw the Connecticut over her port bow; this was sworn to by our witnesses, and conceded by the counsel of the Connecticut.

Now, Hall saw the Othello when the Connecticut was abreast of Diamond Reef (Hall, fols. 37 and 43), and Murray, the pilot, on the Othello (fols. 162-167), and Brown, the engineer of the Starbuck (fol. 218) saw the Connecticut when she was abreast of Diamond Reef, the Othello then being about abreast of the bridge abutments.

The Connecticut ran then from Diamond Reef to Coenties Reef, a distance of $\frac{3}{8}$ of a mile, at the rate of two miles an hour, having the Othello in full sight coming down in an opposite direction, but

each vessel having the other on the port hand, and the Othello at about double the rate of speed, running during this time about ⅞ of a mile.

Then the Connecticut, *her pilot and captain, not having seen the Othello at all,* turned *sharp in towards New York*, thus blocking up the whole channel, the only channel through which the Othello could pass, and having thrown herself across the channel, *then first saw the Othello, and gave first two whistles and then three, as a signal of danger.*

III.

Now, what are the rules of law applicable?

(*a.*) The rule as to vessels in the position stated is, that the Othello was bound to keep her course, and if tows are bound by the same laws of navigation as other vessels, then the Connecticut should not have made the change she did.

What are the rules, head and head, each vessel must port and pass on the porthand of each other, but if in the port hand of each other when first sighted, *a fortiori*, should they go to port?

(*b*) Again, if the Connecticut made a change towards the New York shore—no matter where—then she brought the Othello on her own starboard hand, and the law is that in such a case the Othello must keep her course and the Connecticut keep out of her way, see inspectors rules 1, 3, 6, rule 19, sec. 4233 U. S. R. Stat.

Why did not the Connecticut keep her course? The answer is apparent; she would have done so had her pilot and look-outs seen the Othello, but they swear they never saw her until they had

swung off, and the Connecticut was more than one-half her length inside the drilling machine, heading on to the New York Shore, (Temple, fol. 63, and then both pilot and captain of the Connecticut jumped to blow the whistle. Temple, fol. 64).

(*c*). What is the rule of law as to blowing whistles? The vessels are to port and pass to the right when meeting head and head or nearly so, but if a pilot deems his course unsafe or from any other cause desires to take the contrary course, he is to *first* blow two whistles when the vessels are at least half a mile apart, and *then wait* until he gets an answering signal. It was the duty therefore of the Connecticut before she stopped her engine (which was the same as starboarding her wheel, as for the time being the Stevens going ahead on her starboard side, took the place of her rudder). To notify the Othello, and say to her in the language of the steam whistle, "I am going to make a change" —but she entirely omitted this, and the reason is the Othello was not seen, and the Connecticut was navigated without reference to other vessels.

The reason for taking this course, is that the Othello was not seen. If the captain of the Connecticut was on her stern; that was the reason he did not see the Othello. If her mate and look-out were there, that was the reason they did not see the Othello; why the pilot did not see the Othello, cannot be accounted for.

It must be remembered that the Connecticut was seen from the Othello, when the former vessel was abreast of Diamond Reef; then the Othello should have been seen from the Connecticut.

IV.

But assume that the Connecticut was in fault, we are aware that it will be claimed that the Othello should have avoided the collision if it were in her power. The burthen of showing this, of course rests on the Connecticut.

Pennsylvania, 19 Wal., 135.

It must be conceded that there was no possibility of avoiding a collision, unless it be shown that the Othello was so far away, as that she could have avoided the collision by backing. That question is to be determined by the position of the vessels, when the Connecticut made her change, of course towards the New York docks. The witnesses swear, we are aware that the Othello was at this time, at the bridge abutment, but the pilots of the Connecticut and Stephens, it must be assumed would feel like swearing the Othello, as far away as possible. They would not admit that the Othello had come down to within 2 to 4 lengths of her, when they made their change.

Besides the tendency of all the witnesses looking up the river would be to inaccuracy, the would be deceived by the perspective; they would be much better judges of the position of an object about abreast of them.

Now the witnesses do not agree on this point. They vary in placing the Othello when the whistles were blown at, from the abutments down almost to Wall street ferry.

The speed of the vessel demonstrate that the Othello could not have been so far up at that time. Hall says that when he first saw the Othello, the Connecticut was abreast of Diamond Reef.and he is uncontradicted on this point. The Connecticut then ran $\frac{3}{8}$ths of a mile (see our proposed findings as to distances), with the Othello coming down the river. Now if the Connecticut, from the time she was abreast of Diamond Reef ran three-eighths

of a mile at her rate of speed, which was two miles an hour, then the Othello at her rate, four miles an hour, would run six-eighth's of a mile. That gives nine-eighths of a mile that the two vessels approached each other from the time the Connecticut was abreast of Diamond Reef.

The distance between pier 44 and Diamond Reef is 1⅜ miles. If you say that at the time the Connecticut was off Diamond Reef the Othello was just off pier 44, you make these vessels, when the Connecticut reached Coenties Reef not three-eighths of a mile—about ¼ of a mile apart—when the Connecticut got up to the drilling machine, and began to make the turn.

Again, Murray, Brandow and Brown swear that they saw the Connecticut when she was abreast of Diamond Reef, when the Othello was almost abreast of the bridge abutments.

Take the chart, put the Connecticut abreast of Diamond Reef, and the Othello abreast of the abutments. Then, while the Connecticut is running to Coenties Reef, the Othello will be running from the abutments down towards that reef, and will be near the Wall street Ferry when the Connecticut makes her turn at Coenties Reef.

Another test, the Starbuck had pulled the Othello out in the river on the Othello's port bow. After that she cast off, lay still until the Othello had passed her, and then followed her down the river, and came up on her starboard quarter.

Brown, the engineer of the Starbuck, testifies that when the Starbuck had got on the starboard side of the Othello, that the Othello was down to Wall Street Ferry (fol. 219).

Now the same witnesses who say that when they saw the Othello at the time the two whistles were blown, she

was up at Fulton Ferry, say that when they saw the Othello first—they saw the Starbuck on the Othello's starboard quarter, (Temple 83, Frear 97; Tounade 133).

The evidence of such a fact, we claim is entitled to more weight than the judgment of those witnesses, as to distance.

It is proved that the pilot of the Othello, as soon as he saw the change of course, stopped his engine. Bristow (fol. 192), tested actually the Othello, and determined that if stopped and backed when running half speed, that she would run 4 times her length before his headway was stopped, which is near a quarter of a mile.

The injury received by the Morgan agrees with

"	H. Wilse,	Direct. . . .	56
"	" "	Cross . . .	57–58
"	H. Temple,	Direct . . .	65–66
"	" "	Cross . . .	67–70

this test of speed of the Othello, and shows that she must have been almost entirely stopped. She had 3,630 tons of cargo, and presented a weight of from 5,000 to 6,000 tons to the amidships of the canalboat which was swinging in the tide with the tail of the tow toward the stern of the Othello.

The boats could have comparatively scarcely more than egg shells under such circumstances; it is evident shat if she was going at any rate at all, she would have gone entirely through the tow, instead of into the side of one of the boats.

This shows that she must have been nearly a quarter of a mile away when her engines were stopped, and unless she ought to have stopped them more than a quarter of a mile away from the Connecticut, she would not be in fault, for she could not do anything else but stop and back.

But was the pilot of the Othello bound to keep his eye continually fixed on one vessel, and that vessel running on a parallel course to his, 300 feet on his port bow? Was he bound to observe *the very instant* that such vessel should change her course? Had he not the right to assume that that vessel would keep her course, or give him timely warning of her departure from it? With all the river before him, covered with the great commerce of New York, must he keep his eye fixed on the Connecticut alone? Had he not the right to assume that that vessels would clear each other on the courses they were pursuing, he need pay no further attention to her, unless she signalled to him a desire to change her course?

The Free State, 1 Otto, 205.

We insist that such is the reasonable requirement of the law, and that the pilot of the Othello was not required to hold himself in readiness at any instant to take action to avoid the Connecticut, until he had received the signals from her of an intended change of course.

V.

It is contended that the pilot of the Othello, was negligent because he did not see the tow, although he did see the Connecticut, as well as the other witnesses from the Othello when she was off Diamond Reef.

(*a.*) But there is no different rule of law for a tug with a tow.

"Civilla" supra.

It is clear that it makes no difference for the purpose of this case, whether he saw the tow or not. For the rules governing the course to be pursued

by such vessel, were the same whether she had a tow or not. It comes with ill grace from the pilot of the Connecticut, to charge the pilot of the Othello, with negligence in this respect when he did not see the Othello at all until after he had turned to New York, and was already just in the jaws of collision.

VI.

It cannot be claimed that there would have been any collision, if the Connecticut had slowed when the Othello is said to have been at Fulton Ferry, even if the Connecticut was then at Coenties Reef, which are ½ mile apart. (The Connecticut then came within the force of Rule 6, Inspectors' Rules.)

If the Connecticut had then stopped her engines and the engines of the Stevens as well, she could have lain still until the Othello had passed her, without any difficulty or danger.

If she had lain still five minutes, she would not in that time drifted up the river more than 250 feet, which would not have interfered in the slightest with her landing her tow as she desired, and by that time the Othello would have passed her in entire safety to all concerned.

VII.

The Circuit Judge erred in finding it a fault, on the part of the Othello, that she did not stop when she found that the Connecticut had commenced to change her course, because,

(*a.*) When the Connecticut was first seen by the Othello, the Connecticut and Othello were heading

upon substantially parallel courses, each having the other upon the porthand, and under both the rule of law and the rule of the sea, each were bound to keep to the right. It required no signal from either vessel to observe and keep this rule.

(*b*) When the Connecticut changed her course tending towards the New York shore, that brought the Othello on her starboard hand, and the duty under the rule became imperative upon the Connecticut, to avoid the Othello and allow her to keep upon the course she was then pursuing, and that she was bound to sea between Governor's Island and the Battery was a fact that must have been well known to those on the Connecticut and the Stevens.

(*c*) This change of course in the absence of any signal on the part of the Connecticut, imposed no duty upon the Othello. She had the right to assume that the rule was understood by the pilots of the Connecticut and Stevens, and would be observed.

(*d.*) The tide being flood, had the Othello stopped in advance of any signal from the tow, it might very well be claimed as a fault, that she had so stopped and thus allowed the tow, which was presenting its broadside to the tide, to drift against the stern of the Othello, when, had she kept on, she might have safely passed between the Connecticut and New York. It would have been a fault of which the tow might have justly complained, had the Othello, without any signal, have taken the initiative of changing a well settled and recognized rule without having first received a signal of intention to change such rule.

(*e*). The Othello, as a matter of law, had the right to assume that the tow would observe the rule, and did she desire any modification of the rule,

would indicate her desire by signaling to have it changed.

(*f.*) The Othello had the right to assume that the tow would, in the absence of a signal, stop in turn to allow the Othello to pass ahead of her, the slowness with which the respective vessels were moving strengthening this presumption.

(*g*). Every presumption is in favor of the Othello, she had the right of way and the right to keep it, and the right to assume that the other vessel would observe the rule and give to the Othello her well-known rights.

(*h*). When the Connecticut was first seen she was away off on the porthand of the Othello, and inclined if anything to the Brooklyn shore, and headed on a course opposite to that of the Othello, and it was the right of the Othello to dismiss her from her attention and watch from that time.

(*i.*) The instant that the signals were given from the Connecticut of her desire to change the rule while it was impossible to change her course and go under the stern of the tow, as found by the learned Circuit Judge, and upon which the testimony is overwhelming, she did the only thing that she could do, and that was to stop and back, and which she did without delay, and at the time of the collision she had nearly, if not entirely, overcome her headway, the tow was carried against her stern by the swing and force of the tide.

(*j*) The slowing and stopping of the Othello was commenced about abreast of Wall Street Ferry.

(*k.*) These suggestions, we submit, have their foundations in good sound policy and law, and the

only rules that can be laid down which shall prevent confusion and insure safety and entail upon each vessel a due sense of its responsibility.

This was the only fault that the learned Judge imputes to the Othello, and we again submit, that he erred in his law.

VIII.

The Circuit Court found that, as a matter of fact, the the Othello could not have gone under the stern of tow, which was then covering nearly three times the width of the channel through which the Othello had to pass, and this finding which, under the existing law is conclusive, it is abundantly sustained by the overwhelming testimony of every expert who was examined in the case.

IX.

As to the Connecticut the Circuit Court has found as matter of fact when the Othello ought to have been seen by those on the tow, she was about abreast of the Brooklyn Bridge piers and at that time, she and the Othello were running upon opposite courses, each having the other on the port hand. That she subsequently changed her course across the river and towards the New York shore, until her tow was stretched broad side to the tide, and covering a space in the river of about 1,050 feet, and right across the downward course of the Othello.

She gave no signals to the Othello, until her tow was tailed across the river and then too late for the Othello to avoid her.

And while the finding of the learned Judge upon these questions of fact are conclusive, the testimony fully bears out the findings of the Judge.

X.

These facts and the finding of them multiplies the faults of the Connecticut, and the Circuit Judge has found,

I. That the Connecticut was in fault in changing her course before the Othello passed.

II. Did she intend to change her course, then it was her duty to have at once signalled the Othello and in time to give the Othello time to have taken measures to have avoided her.

III. That the signals being not given until she and her tow were tailing across the river was another fault on her part.

IV. And to this may be added, another overwhelming fault and that was under the law; it was the duty of the Connecticut to have avoided the Othello, and which she failed to do.

XI.

We submit, as a proposition of law, that where the testimony establishes certain facts, we have the right to describe the facts as bearing upon the question of law, whatever may have been the finding of the Judge below.

XII.

If the Connecticut was in fault, and of which we submit there is no doubt, then it is difficult to come to the conclusion that the Stevens was not, because:

a. Before the tow was in sight of the Othello, the S. A. Stevens was a part of the motive power that was controlling the onward motion and course of the tow.

b. The machinery was continued in motion after that of the Connecticut was stopped, and was carrying the tow more and more across the course of the Othello.

(*c*) It is no answer to say that she was receiving orders from the pilot of the Connecticut. If she was under the orders of such pilot and he did and had the right to control the actions and movements of the S. A. Stevens, then if her actions contributed to this collision, then she is just as much in fault as if the pilot of the Connecticut had been her pilot, and controlling her movements. If a state of facts like these could screen the S. A. Stevens, then it would have been a perfect defence to the Connecticut had some other man been at the wheel of the Connecticut, subject to the orders of the pilot.

(*d*) If he had control of all the motive power that controlled this tow, then if he was in fault all the vessels he was controlling were equally in fault.

XIII.

We respectfully submit, that the decree of the Circuit Court, as to the Othello, should be reversed, and a decree holding the Connecticut and the S. A. Stevens liable to the libellant's damages should be given.

BEEBE, WILCOX & HOBBS,
For Claimants of Othello.

BEEBE,
Of Counsel.

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SUPREME COURT U. S.
FILED
MAR 1 1881
JAMES H. McKENNEY, Clerk

U. S. Supreme Court.

MADISON M. CALEB,
Appellant,

vs.

WILLIAM H. FOOTE AND SAMUEL Schuyler, claimants of the steamboat *S. A. Stevens*, her engine, &c., impleaded with the *Connecticut* and *Othello*.

Brief and Points of Claimant of the S. A. Stevens, &c., Respondent.

First.—Statement of the Case.

(1.) This is an appeal by Madison M. Caleb, the libelant, from the decree of the United States Circuit Court for the Eastern District of New York, entered herein on the 24th day of November, 1877 (bearing date the 22d), *so far* as the same affirms the decree of the District Court dismissing the libel, with costs, as against the steamboat *S. A. Stevens*, her engine, &c., and awards costs to her claimants in the District and Circuit Courts.

(2.) As to the *Stevens*, the libellant, in the 4th article of the libel, after setting up his towage contract with owners of the *Connecticut*, the making up of the tow, and its safe passage from

Albany, and arrival off the Battery, in the port of New York, on Wednesday, A.M., 18th August, 1875, alleges that the *Connecticut* was there joined by the steamboat *S. A. Stevens* as a *helper*, she coming alongside on the starboard side of the steamboat *Connecticut* to help direct the steerage and course of the *Connecticut* and tow.

(3.) In the 5th article of answer of the *Stevens* (p. 8), it is admited and alleged that the *Stevens* did join the *Connecticut*, as alleged in the libel, *as a helper to assist the Connecticut with her tow* in going round into the East river, and in coming round into the East river, the said helper was on her starboard side to help direct the steerage of the *Connecticut* and her tow.

The defenses set up in the answer are substantially the same as those of the *Connecticut*, but with the additional defense relied upon by the *Stevens*, set up in the ninth article of her answer, as follows:

Ninth.—And these respondents further allege, that said steamboat *S. A. Stevens* was not, nor were these respondents as her owners, a party or parties to any contract or agreement for the towing of said canal-boat *Sam Morgan*, nor under any obligation to her owner for or in respect of her towing. That the only connection of the said *S. A. Stevens* with the transaction alleged in said libel was as a helper, employed by and on behalf of said steamboat *Connecticut* and owners, to assist said *Connecticut* and tow in steering, under the direction and in obedience to the orders of her pilot, and to do what might be required by said *Connecticut*, or her master or pilot in charge, in aid of the navigation of said *Connecticut* and tow, and of her performance of the towing service, undertaken by her under the orders of said master and pilot of the *Connecticut;* that whatever was done by the *S. A. Stevens* was done in the performance of the lawful directions and orders of said master or pilot of the *Connecticut;* and that by reason of the premises, neither the said *S. A. Stevens* nor these respondents, as her owners, are responsible therefor, nor for any act of omission, to said libelant.

(4.) The Circuit Judge finds (in accordance with the evidence, p. 80), that the *Stevens* was acting in a subordinate capacity *as a helper*, as alleged in the libel, and admitted in the an-

swer, assisting the *Connecticut* in towing in the East river, and in the execution of her manœuvre of rounding Coenties reef to land her tow, and by necessary implication that the *Connecticut* had the control, selected the course, gave the orders, and took the responsibility, and his finding, expressly as a matter of fact, that the loss of the canal-boat *Sam Morgan* resulted from negligence of the *Connecticut* and *Othello*, excludes the imputation of any fault to the *Stevens*.

Second.—And the relation of the *Stevens* being such as above stated, and there being no imputation of fault to her in the findings, even if the *Connecticut* should be held responsible for the whole or any part of the damage resulting from the collision, the libel stands properly dismissed, as to the *Stevens*, upon the principle laid down in Sturgis *v.* Boyer, 24 How. U. S., 110, that the responsibility lies on the person having the control and giving the orders, and that the lien given for damage caused by the collision is on the vessel to which these persons belong, and not upon the one acting under orders as a mere motive power or helper.

See also case of the *Nebraska*, 2 Ben., 500.

Third.—The decree of the Circuit Court, dismissing the libel as to the *Stevens* with costs, should be affirmed, with costs.

ABM. VAN SANTVOORD,
Counsel for Claimants of the
"S. A. Stevens," Respondent.